Supreme Court, U. S.
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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-167

UNITED STATES OF AMERICA,

Petitioner

—v.—

CHARLES W. RAMSEY and JAMES W. KELLY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED AUGUST 5, 1976
CERTIORARI GRANTED OCTOBER 4, 1976

In the Supreme Court of the United States

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* A copy of the opinion of the court of appeals is reprinted as Appendix A to the petition for a writ of certiorari. The judgment of the court of appeals appears as Appendix B to the petition.

CRIMINAL DOCKET

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

No. 74-623

1. CHARLES W. RAMSEY
2. JAMES W. KELLY

21 U.S.C. 9552(a); 843(b); 841(a): Importation of a controlled substance; unlawful use of communicative facility; unlawful possession with intent to distribute a controlled substance.

RELEVANT DOCKET ENTRIES

Date	Proceedings
10/25/74	Indictment filed
11/1/74	Motion to suppress the physical evidence by United States Customs denied
11/18/74	Jury trial waived
11/22/74	Stipulated Record in part submitted
12/2/74	Remaining portions of Stipulated Record submitted
12/20/74	Judgment directing verdict of guilty be entered as to both respondents
2/14/75	Sentence imposed; Judgment entered as to defendant Charles W. Ramsey Notice of Appeal of Charles Ramsey filed
7/2/75	Sentence imposed; Judgment entered as to defendant James W. Kelly. Notice of Appeal of James W. Kelly filed

Date	Proceedings
3/21/75	Certified Original Record filed U.S.C.A.
6/10/76	Opinion for the Court filed by Circuit Judge McGowan Dissenting opinion filed by Circuit Judge Robb.
7/12/76	Copy of letter from Clerk, U.S. Supreme Court extending time to file petition for certiorari to August 9, 1976, filed.
8/9/76	Notice of filing petition for certiorari in S.C. No. 76-167 on August 5, 1976, filed
10/12/76	Certified copy of order from the Supreme Court granting petition for a writ of certiorari in S.C. # 76-167 on October 4, 1976, filed.

AFFIDAVIT IN SUPPORT OF A U. S. MAGISTRATE'S SEARCH WARRANT FOR THE PREMISES OF APARTMENT 2, 13-S STREET, N.E., WASHINGTON, D.C., DESCRIBED AS A MULTI-UNIT BRICK ROW HOUSE.

On February 1, 1974, information was received by the Washington District Office, Drug Enforcement Administration, from the Bangkok Regional Office, Bangkok, Thailand, that William WARD and Sylvia BAILEY had distributed twenty-five (25) ounces of high-grade Heroin through the mail system to the United States and possibly Germany. The Heroin was contained in two types of envelopes; (1) a white envelope with Thai stamps, "airmail" stamped in red, measuring 8½" by 4¼", and (2) a brown envelope with Thai stamps, "airmail" stamped in red, measuring 6¾" by 4¾". At least two of these envelopes were addressed to the CONTINENTAL PRINTING COMPANY, 1125 "D" Street, N.E., Washington, D. C. 20002 from the GETZ PAK PRINTING COMPANY, 91 Patpong, Bangkok, Thailand.

On Monday, February 4, 1974, information was received by the Washington District Office, Drug Enforcement Administration, that BAILEY and WARD were arrested in Room 1117 of the Rama Hyatt Motel, Bangkok, Thailand, in possession of a kilogram of heroin. At the time of their arrest, WARD and BAILEY were in the process of dividing a kilogram of Heroin into ounce envelopes for distribution to the United States via mail. Twenty-nine (29) envelopes were sealed and addressed to various addresses in the United States. The four (4) addresses below were among the 29, and are in the Washington, D. C. area:

TO: Miss D. Kelly
1622 Perry Street, N.E.
Washington, D. C. 20018

FROM: Wing Chu
71 Sub Road
Bangkok, Thailand

TO: Miss Mary Richardson
311 Rock Creek Church Rd., N.W.
Washington, D. C. 20011

FROM: S. Richardson
293-2 Suriwongse Road
Bangkok, Thailand

TO: Continental Printing Co.
1125 D Street, N.E.
Washington, D. C. 20002

FROM: Kim Lee Printing Co.
P. O. Box 127
Bangkok, Thailand

TO: Miss Shirley Hill
5109 Mann
Deanewood Park, Maryland 20027

FROM: K. Singh
13216 Gayson Road
Bangkok, Thailand

On February 5, 1974, information was received from the New York Regional Office, Drug Enforcement Administration, that the United States Customs had intercepted eight (8) envelopes containing a white powdery substance addressed to four Washington, D. C. addresses. Two envelopes were addressed to Miss D. KELLY, 1622 Perry Street, N.E., Washington, D.C. 20013. One of the two envelopes contained 21 grams of a white powdery substance, for a total of 49 grams. The return address was reflected as MALER SAE HENG, 66 Sukhumnit, Bangkok, Thailand. A field test was initiated by George Kallnischkies, Supervisory Customs Mail Specialist, and a positive reaction for an opiate substance was obtained. Two other envelopes were addressed to CONTINENTAL PRINTING COMPANY, 1125 "D" Street, N.E., Washington, D. C. 20002, from THE GETZ PAK PRINTING COMPANY, 91 Patpong, Bangkok, Thailand. Each of the envelopes contained a white powdery substance, and each envelope contained 21 grams of said substance for

a total of 42 grams. A field test by Customs Officer Kallnischkies produced a positive reaction for an opiate substance. Two more envelopes were addressed to Miss Mary RICHARDSON, 311 Rock Creek Church Road, N.W., Washington, D. C. 20011, from NEW STAR STUDIO, 345 Metraphan, Bangkok, Thailand. One envelope contained 21 grams of a white powdery substance, and the other envelope contained 14 grams of a white powdery substance, for a total of 35 grams. A field test by Customs Officer Kallnischkies produced a positive reaction for an opiate substance. The last two envelopes were addressed to Miss Shirley HILL, 5109 Mann Street, Deanewood Park, Maryland 20027, from KAMOL JEWELERY SHOP [illegible] Rama IV Road, Bangkok, Thailand. Each of the envelopes contained 21 grams of a white powdery substance, for a total of 42 grams. A field test by Customs Officer Kallnischkies produced a positive reaction for an opiate substance.

On February 5, 1974, the eight (8) envelopes containing the suspected Heroin were turned over to Special Agents David Thamann and Kenneth Keefe, New York Regional Office, Drug Enforcement Administration, by U.S. Customs Officer George Kallnischkies. On February 6, 1974, the envelopes were forwarded in a locked mail pouch to Postal Inspector Richard Hall, Merrifield, Virginia, under controlled conditions.

On February 12, 1974 the eight (8) envelopes were received by Inspector Richard Hall, U.S. Postal Service, Merrifield, Virginia. A search of the envelopes pursuant to a U.S. Magistrates Search Warrant on February 12, 1974 yielded a quantity of white powder in each envelope. A field test by the Affiant resulted in a positive reaction for the presence of an opiate. All of the white powder was seized from the eight (8) envelopes except for a small amount. Lactose was then substituted for the suspected heroin by the Affiant and the envelopes were resealed by the Affiant and Inspector Hall. The envelopes were retained in the custody of Inspector Hall for a future controlled delivery.

A laboratory analysis of the heroin contained in three (3) envelopes, addressed to Continental Printing Com-

pany, and 1125 "D" Street, N.E., Washington, D. C. 20002 which were previously seized on February 7, 1974, pursuant to a U.S. Magistrate's Search Warrant, yielded 92.5% Heroin Hydrochloride.

On February 4, 1974, an individual identifying himself as "Melvin Austin" obtained a cashier's check in the amount of $2,000.00 from the Riggs National Bank payable to Gilda BUCK, a documented associate of Sylvia BAILEY. On February 7, 1974, an individual identifying himself as "Melvin Johnson" obtained a cashier's check in the amount of $4,000.00 payable to Gilda BUCK from the same branch of Riggs National Bank. The individual purchasing the checks from Riggs on both occasions in February has been subsequently identified by Bank officials as James W. Kelley, MPD identification # 132 918.

A check of Sylvia BAILEY's telephone tolls at Aschaffenburg, Germany, by Drug Enforcement Administration Agents reveals a telephone call being made on 11/23/73 to Washington, D.C. telephone number (202) 635-0892. This telephone number is located at 13 S Street N.E., Apartment 2, Washington, D.C. This phone is listed to Inez Arrendell sister of Charles Ramsey. Further, an examination of telephone tolls with telephone number (202) 635-0892 reveals numerous telephone calls to Germany, and in particular, to the area code "6021" (Aschaffenburg, Germany area code). Upon conferring with the Metropolitan Police Department of Washington, D.C., it has been determined that 13 S Street, N.E., App. # 2, Washington, D.C., is occupied by Charles W. RAMSEY, and during December 1973, Officers of the Metropolitan Police Department have observed RAMSEY exiting these premises during the morning hours.

On 2/14/74, James W. KELLY was observed by the officers to meet with Charles RAMSEY, in the Unit Block of S Street, N.E. after having also having been observed the affiant and the DEA agent picking up the letters containing heroin at each of the addresses listed above (5109 Mann Street, Deanewood, Md.; 1125 D Street, N.E., Washington, D.C.; and 311 Rock Creek Church Road, N.W., Washington, D.C.). KELLY was

then observed by DEA agent [illegible] passing these letters to Charles W. RAMSEY who was in the 1972 Lincoln (921-405 D.C. Registration) parked approximately in the front of 13 S Street, N.E. RAMSEY was observed by DEA agents as he examined the package containing the letters, and incident to the arrest of both RAMSEY and KELLY, RAMSEY was observed by DEA Agents to hand the package back to KELLY.

A search of BAILEY incident to arrest produced a personal notebook with the notation "Hotel Hyatt Rama, Bangkok, Thailand." This is the hotel where Sylvia BAILEY was arrested in possession of one kilogram of Heroin. In addition, there is a notation in the notebook "BAILEY" number "# 6021-73133" and "# 6021-29156." Both these telephone numbers are located at Aschaffenburg, Germany, the hometown of Sylvia BAILEY. Additionally, a letter was found in RAMSEY's possession addressed to "Mr. Charles RAMSEY, 13 S Street, N.E., Washington, D.C., 20002."

It is the opinion of the Affiant that based upon his knowledge and experience over the past year and a half that the purity of the Heroin being mailed to RAMSEY would normally require diluting and packaging prior to "street distribution." It would be necessary to have a location house or room, where this packaging could be done. It is to be noted that when RAMSEY was observed within minutes of his arrest he was *approaching* the immediate vicinity of 13 S Street, N.E., and was *parking* the Mark IV which he was driving. Thus the affiant submits that it is reasonable to believe that RAMSEY was preparing to enter 13 S Street, N.E., Washington, D.C. (There is no evidence yet developed linking RAMSEY to any other house or apartment in the immediate vicinity of 13 S Street, N.E.) and in light of the several phone calls from the phone within apartment # 2 to the Aschaffenburg, Germany hometown of Sylvia BAILEY at least since December of 1973, that it is reasonable to believe that 13 S Street, has been continually and recently used as a cutting and packaging "pad" as well as a general business address for the perpetuation of an international network of illicit narcotic trafficking.

So too, it is the firm belief of the affiant that Charles W. RAMSEY was the ultimate Washington, D.C. recipient of the heroin mailed from Bangkok, Thailand, by Sylvia BAILEY. This fact is based upon: (1) telephone tolls from RAMSEY's home telephone at 13 S Street, N.E., Apartment # 2, Washington, D.C. to Aschaffenburg, Germany, the hometown of BAILEY; (2) the notations found on RAMSEY at the time of his arrest linking him to the hotel where BAILEY was arrested in possession of a kilogram of Heroin; and (3) and the observations of DEA Agents on 2/14/74 when RAMSEY took possession of the letters containing Heroin from KELLY.

In view of the facts stated above, and the additional fact that Charles RAMSEY is a known and convicted narcotic felon (as well as having been recently convicted of making false declaration before a Grand Jury), it is the firm belief of the affiant that there is now contained on the premises at 13 S Street, N.E., Apartment # 2, Washington, D.C., the controlled substance Heroin; paraphernalia used in the preparation of Heroin for retail distribution, other instruments, fruit and documents including records, logs, etc., related to the preparation and dispensation of Heroin and any other narcotic drug illegally held in violation of 21 U.S.C. 174 and 21 U.S.C. 841(a)(1).

/s/ Michael E. Grimes
MICHAEL E. GRIMES, Special Agent
Drug Enforcement Administration

Subscribed and sworn to before me this 15th day of February, 1974.

/s/
United States Magistrate

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on April 1, 1974

Criminal Case No. 74-623

UNITED STATES OF AMERICA

v.

CHARLES W. RAMSEY
JAMES W. KELLY
SYLVIA BAILEY
WILLIAM M. WARD

Grand Jury Original

Violation: 21 US Code 952(a); 843(b); 841(a) (Importation of a Controlled Substance; Unlawful Use of a Communicative Facility; Unlawful Possession With Intent to Distribute a Controlled Substance)

The Grand Jury charges:

FIRST COUNT:

On or about February 14, 1974, within the District of Columbia, CHARLES W. RAMSEY, JAMES W. KELLY, SLYVIA BAILEY and WILLIAM M. WARD did unlawfully, knowingly and intentionally import 166.5 grams of heroin, a Schedule I narcotic drug controlled substance and other substances, into the United States from a place outside thereof, in violation of Title 21, U.S. Code, Section 952(a).

SECOND COUNT:

On or about February 14, 1974, within the District of Columbia, CHARLES W. RAMSEY, JAMES W. KELLY, SYLVIA BAILEY, and WILLIAM M. WARD did unlawfully, knowingly and intentionally use a communication facility, that is, the United States mails in committing and in causing and facilitating the commission of acts constituting a felony under both Title 21, U.S. Code, Section 952(a) and as set forth in Count 1 and Title 21, U.S. Code, Section 841(a) as set forth in Count 17 of this indictment and relating specifically to the address of 1125 D Street, Northeast, Washington, D.C. and identified as lab exhibit # 6 and 6(s) in violation of 21 U.S. Code, Section 843(b).

THIRD COUNT:

On or about February 14, 1974, within the District of Columbia, CHARLES W. RAMSEY, JAMES W. KELLY, SYLVIA BAILEY, and WILLIAM M. WARD did unlawfully, knowingly and intentionally use a communication facility, that is, the United States mails in committing and in causing and facilitating the commission of acts constituti nga felony under both Title 21, U.S. Code, Section 952(a) as set forth in Count 1 and Title 21, U.S. Code, Section 841(a) as set forth in Count 17 of this indictment and relating specifically to the address of 1125 D Street, Northeast, Washington, D.C. and identified as lab exhibit # 7 and 7(s) in violation of Title 21, U.S. Code, Section 843(b).

FOURTH COUNT:

On or about February 14, 1974, within the District of Columbia, CHARLES W. RAMSEY, JAMES W. KELLY, SYLVIA BAILEY, and WILLIAM M. WARD did unlawfully, knowingly and intentionally use a communication facility, that is, the United States mails in committing and in causing and facilitating the commission of acts constituting a felony under both Title 21,

U.S. Code, Section 952(a) as set forth in Count 1 and Title 21, U.S. Code, Section 841(a) as set forth in Count 17 of this indictment and relating specifically to the address of 311 Rock Creek Church Road, Northwest, Washington, D.C. and identified as lab exhibit # 10 and 10(s) in violation of Title 21, U.S. Code, Section 843(b).

FIFTH COUNT:

On or about February 14, 1974, within the District of Columbia, CHARLES W. RAMSEY, JAMES W. KELLY, SYLVIA BAILEY, and WILLIAM M. WARD did unlawfully, knowingly and intentionally use a communication facility, that is, the United States mails in committing and in causing and facilitating the commission of acts constituting a felony under both Title 21, U.S. Code, Section 952(a) as set forth in Count 1 and Title 21, U.S. Code, Section 841(a) as set forth in Count 17 of this indictment and relating specifically to the address of 311 Rock Creek Church Road, Northwest, Washington, D.C. and identified as lab exhibit # 11 and 11(s) in violation of Title 21, U.S. Code, Section 843(b).

SIXTH COUNT:

On or about February 14, 1974, within the District of Columbia, CHARLES W. RAMSEY, JAMES W. KELLY, SYLVIA BAILEY, and WILLIAM M. WARD did unlawfully, knowingly and intentionally use a communication facility, that is, the United States mails in committing and in causing and facilitating the commission of acts constituting a felony under both Title 21, U.S. Code, Section 952(a) as set forth in Count 1 and Title 21, U.S. Code, Section 841(a) as set forth in Count 17 of this indictment and relating specifically to the address of 5109 Mann Street, Deanewood, Maryland and identified as lab exhibit # 12 and 12(s) in violation of Title 21, U.S. Code, Section 843(b).

SEVENTH COUNT:

On or about February 14, 1974, within the District of Columbia, CHARLES W. RAMSEY, JAMES W. KELLY, SYLVIA BAILEY, and WILLIAM M. WARD did unlawfully, knowingly and intentionally use a communication facility, that is, the United States mails in committing and in causing and facilitating the commission of acts constituting a felony under both Title 21, U.S. Code, Section 952(a) as set forth in Count 1 and Title 21, U.S. Code, Section 841(a) as set forth in Count 17 of this indictment and relating specifically to the address of 5109 Mann Street, Deanewood, Maryland and identified as lab exhibit # 13 and 13(s) in violation of Title 21, U.S. Code, Section 843(b).

EIGHTH COUNT:

On or about February 14, 1974, within the District of Columbia, CHARLES W. RAMSEY, JAMES W. KELLY, SYLVIA BAILEY, and WILLIAM M. WARD did unlawfully, knowingly and intentionally use a communication facility, that is, the United States mails in committing and in causing and facilitating the commission of acts constituting a felony under Title 21, U.S. Code, Section 952(a) as set forth in Count 1 of this indictment and relating specifically to the address of 1622 Perry Street, Northeast, Washington, D.C. and identified as lab exhibit # 8 and 8(s) in violation of Title 21, U.S. Code, Section 843(b).

NINTH COUNT:

On or about February 14, 1974, within the District of Columbia, CHARLES W. RAMSEY, JAMES W. KELLY, SYLVIA BAILEY, and WILLIAM M. WARD did unlawfully, knowingly and intentionally use a communication facility, that is, the United States mails in committing and in causing and facilitating the commission of acts constituting a felony under Title 21, U.S. Code, Section 952(a) as set forth in Count 1 of this in-

dictment and relating specifically to the address of 1622 Perry Street, Northeast, Washington, D.C. and identified as lab exhibit # 9 and 9(s) in violation of Title 21, U.S. Code Section 843(b).

TENTH COUNT:

On or about November 23, 1973, within the District of Columbia, CHARLES W. RAMSEY and SYLVIA BAILEY did unlawfully, knowingly and intentionally use a communcation facility, that is, a telephone, in committing and in causing and facilitating the commission of acts constituting a felony under both Title 21, U.S. Code, Section 952(a) as set forth in Count 1 and Title 21 U.S. Code, Section 841(a) as set forth in Count 17 of this indictment in violation of Title 21, U.S. Code, 843(b).

ELEVENTH COUNT:

On or about November 27, 1973, within the District of Columbia, CHARLES W. RAMSEY and SYLVIA BAILEY did unlawfully, knowingly and intentionally use a communication facility, that is, a telephone, in committing and in causing and facilitating the commission of acts constituting a felony under both Title 21, U.S. Code, Section 952(a) as set forth in Count 1 and Title 21, U.S. Code, Section 841(a) as set forth in Count 17 of this indictment in violation of Title 21, U.S. Code, 843(b).

TWELFTH COUNT:

On or about December 7, 1973, within the District of Columbia, CHARLES W. RAMSEY and SYLVIA BAILEY did unlawfully, knowingly and intentionally use a communication facility, that is, a telephone, in committing and in causing and facilitating the commission of acts constituting a felony under both Title 21, U.S. Code, Section 952(a) as set forth in Count 1 and Title 21, U.S. Code, Section 841(a) as set forth in Count 17 of this indictment in violation of Title 21, U.S. Code, 843(b).

THIRTEENTH COUNT:

On or about December 9, 1973, within the District of Columbia, CHARLES W. RAMSEY and SYLVIA BAILEY did unlawfully, knowingly and intentionally use a communication facility, that is, a telephone, in committing and in causing and facilitating the commission of acts constituting a felony under both Title 21, U.S. Code, Section 952(a) as set forth in Count 1 and Title 21, U.S. Code, Section 841(a) as set forth in Count 17 of this indictment in violation of Title 21, U.S. Code, 843(b).

FOURTEENTH COUNT:

On or about December 10, 1973, within the District of Columbia, CHARLES W. RAMSEY and SYLVIA BAILEY did unlawfully, knowingly and intentionally use a communication facility, that is, a telephone, in committing and in causing and facilitating the commission of acts constituting a felony under both Title 21, U.S. Code, Section 952(a) as set forth in Count 1 and Title 21, U.S. Code, Section 841(a) as set forth in Count 17 of this indictment in violation of Title 21, U.S. Code, 843(b).

FIFTEENTH COUNT:

On or about December 11, 1973, within the District of Columbia, CHARLES W. RAMSEY and SYLVIA BAILEY did unlawfully, knowingly and intentionally use a communication facility, that is, a telephone, in committing and in causing and facilitating the commission of acts constituting a felony under both Title 21, U.S. Code, Section 952(a) as set forth in Count 1 and Title 21, U.S. Code, Section 841(a) as set forth in Count 17 of this indictment in violation of Title 21, U.S. Code, 843(b).

SIXTEENTH COUNT:

On or about December 13, 1973, within the District of Columbia, CHARLES W. RAMSEY and SYLVIA BAILEY did unlawfully, knowingly and intentionally use a communication facility, that is, a telephone, in committing and in causing and facilitating the commission of acts constituting a felony under both Title 21, U.S. Code, Section 952(a) as set forth in Count 1 and Title 21, U.S. Code, Section 841(a) as set forth in Count 17 of this indictment in violation of Title 21, U.S. Code, 843(b).

SEVENTEENTH COUNT:

On or about February 14, 1974, within the District of Columbia, CHARLES W. RAMSEY and JAMES W. KELLY did unlawfully, knowingly and intentionally possess, with intent to distribute, 231.67 grams of heroin and other substances, a Schedule I narcotic drug-controlled substance in violation of Title 21, U.S. Code, Section 841(a).

/s/ Dennis F. Earman

A TRUE BILL:

Foreman

/s/ Earl J. Silbert
Attorney of the United States in
and for the District of Columbia

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Crim. No. 74-517

UNITED STATES OF AMERICA

v.

CHARLES W. RAMSEY, ET AL.

MOTION TO SUPPRESS TANGIBLE EVIDENCE

I.

A short time prior to February 4, 1974, eight brown envelopes containing heroin were air-mailed first class to four Washington, D.C. addresses from Bangkok, Thailand by two persons, one of whom was an American citizen. After arriving in this country—the exact point and time of entry is presently unknown to us—U.S. Customs agents seized all eight pieces of mail in New York City, opened the envelopes, field tested the contents thereof, and then resealed them—all without a search warrant. After conducting this warrantless search and seizure the envelopes were turned over to Drug Enforcement Agents (D.E.A.) on February 5, 1974. On February 6, 1974, they were forwarded to the Merrifield, Virginia post office facility under controlled conditions. On February 12, 1974, D.E.A. agents obtained a search warrant for these eight envelopes then located at the Merrifield postal facility, (Exhibit A). The envelopes were seized the same day and refilled for a controlled delivery to the Washington addresses where they were allegedly picked up by defendant James W. Kelly.

It is our contention that the original warrantless search and seizure of the eight envelopes violated the Fourth Amendment standard of reasonableness.

Since 1877, at least, mail of the instant type has been subject to Fourth Amendment protections.

> "Letters and sealed packages of this kind in the mail are as fully guarded from examination and inspection, except as to their outward form and weight, as if they were retained by the parties forwarding them in their own domiciles. The constitutional guaranty of the right of the people to be secure in their papers against unreasonable searches and seizures extends to their papers, thus closed against inspection, wherever they may be. Whilst in the mail, they can only be opened and examined under like warrant, issued upon similar oath or affirmation . . .". *Ex parte Jackson*, 96 U.S. 727, 733 (1877)

Furthermore, regardless of the quantum of probable cause, a search per se not incident to an arrest is absolutely bad. *Taylor* v. *United States*, 286 U.S. 1 (1932). In *Taylor, supra.*, prohibition agents had received complaints about a particular premises for about a year. Upon going there they smelled whiskey from within the garage and a flashlight confirmed the presence of many cardboard cases inside. The agents entered and seized 122 cases of whiskey. Held: invalid.

> "Although over a considerable period numerous complaints concerning the use of these premises had been received, the agents had made no effort to obtain a warrant for making a search. They had abundant opportunity so to do and to proceed in an orderly way even after the odor had emphasized their suspicions; there was no probability of material change in the situation during the time necessary to secure such warrant.", 28 U.S. at 6.

In the case at bar there were no exigent circumstances present to allow for dispensing with a warrant; the eight envelopes were in the custody and control of the postal service and the Supreme Court over four years ago, allowed a 29 hour detention of first class mail during which time a search warrant could be procured for a seizure. *United States* v. *Van Leeuwen*, 397 U.S. 249 (1970).

The only theory we perceive available to the government to support the initial warrantless seizures herein, is the so-called Border Search. Under that concept, all persons entering this country are subject to search and seizure "without probable cause on the basis of mere suspicion alone." *United States* v. *Henriquez*, 483 F.d. 65 (5th Cir. 1973). That definition, however, may be too broad as we read the landmark case of *Carroll* v. *United States*, 267 U.S. 132 (1925). *Carroll* sustained the probable cause search of a car without a warrant under the National Prohibition Act, because of reasonableness. In reflecting upon such searches the Court alluded, inter alia, to the progenitor of 19 U.S.C., Sec. 482 which:

> "[M]ade lawful for customs officers not only to board and search vessels within their own and adjoining districts, but also to stop, search and examine any vehicle, beast or person on which or whom they should suspect their was merchandise which was subject to duty or had been introduced into the United States in any manner contrary to law. . .". *Carroll*, supra at 151. The Court alluded to this statute and similar ones—
>
> "To show that the guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." at 153.

The Court also noted that all travellers may be stopped while crossing international boundaries because of national self protection, "[b]ut those lawfully within the country, entitled to use the public highways, have a right of free passage without interruption of search unless" there is probable cause to believe they are in violation of the law.

The present Border Search authorizing statute is 19 U.S.C., § 482. It provides for searches of any "vehicle, beast, or person, on which or whom he or they shall suspect there is merchandize which is subject to duty, or shall have been introduced into the United States in any manner contrary to law." It also provides for customs agents "to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law."

It is interesting to note that the original Border Search statute considered in *Carroll* v. *United States, supra., i.e.*, 3 Stat. 231, 232, March 3, 1815, distinguished between an ambulatory and permanent situation.

> "And if any of the said officers of the customs shall suspect that any goods, wares, or merchandise, which are subject to duty, or shall have been introduced to law, are concealed in any particular dwelling, store or other building, he shall, upon proper application, on oath, to any judge or justice of the peace, be entitled to a warrant . . . Provided always, that the necessity of a search warrant, arising under this act, shall in no case be considered as applicable to any carriage, wagon, sleigh, vessel, boat, or other vehicle, of whatever form or construction, employed as a medium of transportation, *or to packages on any animal or animals or carried by man on foot.*"

It was this original statute the Court alluded to in *Carroll, supra.*, when it observed that neither this section "nor any of its earlier counterparts has ever been attacked as unconstitutional." 267 U.S. at 152. 13 Stat. 441, 442, February 28, 1865, which again allowed for the so-called Border Search, provided for the stopping and searching of persons or vehicles in transit.

For non-moving situations the statute provided:

> "That in case any store, warehouse, or other building shall be upon or near the boundary line between the United States and any foreign country, and there

> is reason to believe that [items are placed there in violation of law], and the collector . . . or surveyor of customs, shall make oath before any magistrate . . ., that he has reason to believe, and does believe, that such offence has been therein committed, such officer shall have the right to search such building . . ."

14 Stat. 177, 178 July 18, 1866, for the first time specifically allowed customs officers to search any "trunk or envelope". But it is clear from a reading thereof, that such searches without warrant only applied to trunks or envelopes aboard vessels, vehicles, beasts or persons. The present statute 19 U.S.C., § 482 is but an abbreviated form of its predecessors, and from a historical perspective, does not permit for the opening of mail when there is no danger of that mail moving before a warrant can be obtained.

Time and time again the key to the validity *vel non* of a particular search is "reasonableness", vis-a-vis the fact that the warrant procedure is the judicially preferred route.

In *United States* v. *Beckly*, 335 F.2d 86 (6th Circuit 1964) marihuana arrived into this country in a package weighing between 9 and 10 pounds. It was stated to contain wall matts, pillow cases and robes of a total value of $23.00. A customs agent opened the package without warrant and the Court sustained introduction of the evidence at trial. As its first ground the Court relied on the fact that only first class mail is subject to the warrant procedure and here "first class postage was not paid on the package." 335 F.2d at 88. The Court also fashioned a policy that:

> "Fourth Amendment standards applicable to mail matter moving entirely within the country are not applicable to mail matter coming in from outside the country at least where a customs determination must be made. There seem to be no adjudicated cases dealing with the necessity of probable cause and search warrants for inspection by mail, but there are many cases holding or indicating that such is not required generally for searches by customs agents at the borders of the country."

This decision used a shotgun border search approach and extrapolated it to non-moving situations, without analyzing the difference between a true border search and mail matter already within the control of the postal authorities and for which time to obtain a warrant is present. The upshot of this judgment is that narcotics may be mailed first class within the United States and only seized upon probable cause resulting in a warrant while the same mail entering from, let us say, Canada, can be seized without probable cause and without a warrant. Thus, every piece of first class mail entering this country, the government must contend is subject to being opened for any reason and inspected. This would include medical reports, financial reports, letters to loved ones and the like—an awesome governmental power. *United States* v. *Sohnen*, 298 F. Supp. 51 (S.P.N.Y. 1969) also sustained a search of international mail without a warrant relying on the *Beckly*, rationale. However, the Court in Sohnen added a caveat:

> "The Constitution at least prevents harsh and demeaning searches on mere suspicion and it may well prevent the opening of letters, as opposed to packages containing merchandise, without a search warrant."

Sohnen, concerned a sealed package containing twelve gold coins which

> "did not bear a required label stating that it could be opened for customs inspection.
>
> * * * *
>
> The situation here is analogous to the inspection of inbound commercial shipments."

United States v. *Swede*, 326 F. Supp. 533 (S.D.N.Y. 1971), also upheld the opening of first class mail from Switzerland without a search warrant. In ruling, however, the Court determined that the envelope was a "package" and thus, "we do not determine whether the

Constitution prevents the opening of letters, as opposed to packages containing merchandise without a search warrant."

Recently, federal courts have obviously been aware of the havoc that a blanket border search approach to first class international mail would entail, and have accordingly, been narrowing their decisions to exclude letters, as the Court did in *United States* v. *Swede*, *supra*. In *United States* v. *Doe*, 472 F.2d 982 (2d Cir. 1973), for example, the Court upheld the search of a large package from Columbia South America labelled "old clothing."

> "While this court has never expressly so held, there is a substantial body of precedent that would apply the same border-search standards to mail coming into the country, *especially where, as here, there is a representation on the package that it contains merchandise.*" 472 F.2d at 984.

In *Corngold* v. *United States*, 367 F.2d I (9th Cir. 1966) the Court invalidated the search of a domestic first class parcel containing smuggled watches without a warrant. The government, in part, relied on 19 U.S.C. § 482. The Court noted that this was not a border search and, in any event, concluded that:

> "We need not examine the statute's precise meaning, for appellant's attack upon the search of his package is based solely on constitutional grounds and, however it is to be read, the statute could not effectively authorize a search which the constitution prohibited." 367 F.2d at 3.

Cf. *Ex Parte Jackson*, 96 U.S. 727, 733 (1877).

> "No law of Congress can place in the hands of officials connected with the postal service any authority to invade the secrecy of letters and such sealed packages in the mail; and all regulations adopted as to mail matter of this kind must be in subordination to the great principle embodied in the fourth amendment of the Constitution."

> "It can hardly be contended that the sender or the addressee had a reasonable expectation of privacy with regard to a large package mailed from a foreign country, which is represented to contain nondutiable merchandise. Cf. *Katz* v. *United States*, 389 U.S. 347. . .".

Conversely, as to letter type envelopes, such expectation of privacy would be reasonable and accordingly, subject to the Fourth Amendment on the rationale of *Katz*.

In *United States* v. *Various Articles of Obscene Mer.*, 363 F. Supp. 165 (S.D.N.Y. 1973), the Court noted that "the constraints placed on government intrusion into persons and their papers by the Fourth Amendment do apply to Customs searches." at 167. Judge Duffy also observed that: "Some courts have hinted that the standards may be different when dealing with a letter-sized envelope than when it is a package with merchandise which is at issue."

This distinction between letters and packages is, no doubt, due in large part to subjective appraisals of privacy. While all of us have a general notion that large packages can be inspected by postal employees, we strongly believe that our letters and small sealed envelope type of correspondence is beyond postal scrutiny. We abhor notions of censorship such as that practiced in totalitarian countries or prisons. *Stroud* v. *United States*, 251 U.S. 15, 21 (1919). (No expectation of privacy for letters mailed by inmate at Leavenworth penitentiary.) Accordingly, there is a firmly grounded reasonable expectation that this envelope type of mail is secure from intrusion. As a result thereof, only the warrant procedure of the Fourth Amendment could effect a lawful seizure. *Katz* v. *United States*, 389 U.S. 347 (1967). Appellate support for this view is found in *United States* v. *Doe*, *supra*, at 985.

Furthermore, the recent cases of *Almeida-Sanchez* v. *United States*, 413 U.S. 266 (1973) and *United States* v. *Van Leeuwen*, 397 U.S. 249 (1970) have greatly slowed down, we submit, border search powers. In *Almeida-Sanchez*, petitioner was stopped by a border patrol in the United States some 25 air miles from the Mexican

border and marihuana was found. The Court reversed the conviction. over four dissents. In considering the border search concept the Court stated:

> "Whatever the permissible scope of intrusiveness of a routine border search might be, searches of this kind may, in certain circumstances, take place not only at the border itself, but at its functional equivalents as well. For example, searches at an established station near the border, at a point making the confluence of two or more roads that extend from the border, might be functional equivalents of border searches. For another example, a search of the passengers and cargo of an airplane arriving at a St. Louis airport after a nonstop flight from Mexico City would clearly be the functional equivalent of a border search.
>
> * * * *
>
> It is not enough to argue as does the Government, that the problem of deterring unlawful entry by aliens across long expanses of national boundaries is a serious one. The needs of law enforcement stand in constant tension with the Constitution's protections of the individual against certain exercises of official power. It is precisely the predictability of these pressures that counsels a resolute loyalty to constitutional safeguards."

Following *Almeida-Sanchez*, the Court in *United States* v. *Speed*, 489 F.2d 478 (Fifth Cir. 1973) observed:

> "*Almeida-Sanchez*, if it has not answered all the questions about this area of the law, has at least given new focus to the inquiries. We must now ask if a search occurred either at the border or at the functional equivalent thereof. If not, then it is not a border search.
>
> * * * *
>
> In other words, the searching officers must know or have a reasonable suspicion that the very individual or thing to be searched has itself *just crossed the border*." (Emphasis supplied).

In *United States* v. *Hamilton*, 490 F.2d 598 (9th Cir. 1974),

> "At about 4:30 p.m. on the day in question one Fernan, a Border Patrol agent was informed by a previously demonstrated reliable informant that a truck, which he pointed out to him parked across the street from the Customs Agency in Calexico, California, had marihuana concealed in a false compartment in the body bed."

The truck had previously entered from Mexico at 2:30 p.m. When another agent looked out the window it was gone and a general call was sent out. At about 6:30 p.m. government agents recognized the truck and searched it. The Court held that this was not the functional equivalent of a border search. "We merely note, in passing, that this is not a case of a short hiatus after suspicion has been aroused."

In *United States* v. *Van Leeuwen*, *supra.*, respondent was convicted of illegally importing gold coins from Canada. He mailed two 12-pound packages at the post office in Mt. Vernon, Washington a town 60 miles from the Canadian border. One package was addressed to California and the other one to Tennessee. Respondent's car bore British Columbia license plates. "Other evidence showed that respondent had brought the two packages in from Canada without declaring them." Interestingly, a *customs agent* thereafter obtained a search warrant for the packages without first inspecting them. The Court held that the 29 hour delay in obtaining the warrant was reasonable under the investigative circumstances present. The Court applied Fourth Amendment requirements for an inspection of the packages even though they had been taken across the Canadian border. The Court did not seek to justify the seizure under border search concepts.

> "The nature and weight of the packages, the fictitious return address, and the British Columbia license plates of respondent who made the mailings in this border town certainly justified detention without a warrant while an investigation was made."
>
> * * * *

> "The significant Fourth Amendment interest was in the privacy of this first-class mail; and that privacy was not disturbed or invaded until the approval of the magistrate was obtained."

The case can be read to indicate that once an individual or his packages are within the confines of our borders for any appreciable time (here 60 miles, an hour and one-half drive) a border search or functional equivalent thereof is not permissible. In balancing the interests, however, the Court allowed for a lengthy detention without search of the packages to enable a proper warrant to be obtained.

The instant initial search, as we understand the law, is, therefore, invalid for two reasons.

1. The Fourth Amendment protects all letter type first class mail from searches without warrants whether mailed internally or externally. The so-called border search concept was an offshoot of the necessity to act quickly when the individual and his vehicle at a border would soon be gone. No such justification exists herein, where the mail was in the custody and control of the postal authorities and the agents had ample time to apply for a search warrant.

2. Regardless of initial application of the border search concept to these letters, once they were in the custody and control of the postal authorities for any appreciable period at the initial point of entry, the full force and effect of the Fourth Amendment came into play and a search warrant was required before any inspection could occur.

In addition to the recent cases just cited for this proposition, *Carroll* v. *United States*, 267 U.S. 132, 154 (1925) long ago indicated that result.

> "Travellers may be so stopped in crossing an international boundary because of national self protection requiring one entering the country to identify himself as entitled to come in, and his belongings and effects which may lawfully brought in. But those lawfully within the country, (first class mail), entitled to use the public highways, have a right to

> free passage without interruption or search unless there is known to a competent official authorized to search, probable cause. . .".

Apparently, the agents herein were advised of the constitutional error in opening the envelopes initially, and attempted to cover up that transgression by obtaining a search warrant for them on February 12, 1974; that, however, was too late.

Accordingly, we seek to suppress the envelopes, their contents, and all evidence subsequently tainted by the initial unlawful search and seizure. *Silverthorne Lumber Co.* v. *United States*, 251 U.S. 385 (1920).

Wherefore, it is respectfully submitted that the instant motion be granted.

Respectfully submitted,

/s/ Allan M. Palmer
ALLAN M. PALMER
1707 N. Street, N.W.
Washington, D. C. 20036
785-3900

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was personally served on the Office of the U.S. Attorney this 4 day of October, 1974.

/s/ Allan M. Palmer
ALLAN M. PALMER

[3] MOTION TO SUPPRESS TRANSCRIPT PROCEEDINGS

MR. REARDON: The government will call George Kallnischkies.

He will spell his name for the court reporter.

GEORGE KALLNISCHKIES

called to the witness stand on behalf of the government, being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. REARDON:

Q Sir, will you please give the Court your full name and please spell it slowly for the court reporter?

A George Kallnischkies. K-A-L-L-N-I-S-C-H-K-I-E-S.

Q And how are you employed, sir?

A I am employed by the U.S. Customs Service, Region 2, New York City.

Q How long have you been employed in that capacity.

A June 20, 1964.

Q Would you please recount for the Court your responsibilities in that regard?

A My main responsibility is to examine incoming foreign mail, letter class mail, to see if it contains any dutiable merchandise, contraband or narcotics, and other prohibited matters.

Q How long have you specifically been performing that [4] task?

A About eight or nine years.

Q Are you in a supervisory position?

A Yes, sir.

Q How many people work under you, sir?

A I have nine people working at the General Post Office and I have nine people working at the Kennedy Airport.

Q And what class mail do you handle?

A As I said before, we work strictly on letter class mail. Packages go to a different customs section that will examine large packages.

Q What is letter class mail?

A Well, letter class mail includes envelopes matter, newspapers and book packages and so on.

Q Are your inspections restricted to those items coming from without the country?

A Yes, from abroad.

Q Do you also inspect domestic mail?

A No, sir.

Q Could you explain whether in fact there exists first class mail coming to this country from another country?

A No, sir, it is considered letter class mail, sealed mail, but it is not first class mail.

First class mail is only domestic mail, sir.

[5] Q In the course of your inspections of letter class mail coming into this country from without, could you explain to the Court and Counsel what is the ordinary procedures which you will undertake for this task?

A First of all, mail will—we are talking here about airmail in particular and it will come into Kennedy Airport and from there it will be routed to the various post offices and in this particular case to the General Post Office.

The airmail sacks still intact will go into the Registry Division and they will remove registered mail from it, valuable mail, and other mail from certain designated countries that U.S. Customs would like to examine will be routed to me.

Q Do you also inspect registered mail coming into the U.S.?

A Yes, we do.

Q Is that given a different classification than letter class mail?

A It would still be letter class mail. The only thing is that it is considered registered and it is accountable.

Q What does that mean? Would you explain that?

A There is a record kept from the time it is seized until the time it is delivered and the recipient signs for it.

Q Directing your attention to the date of February 4 [6] of this year, do you recall whether you were working on that date?

A Yes, sir, I was.

Q Where were you working specifically?

A Working in the General Post Office in New York City.

Q Did you have occasion to inspect any letter class mail coming into the United States on that day?

A Yes, sir, I did.

Q Could you explain what your procedures were that particular day?

A The procedures were the same as every day. Mail comes in and—a foreign airmail sack and mail gets dumped on a conveyor belt and there the mail is being separated, processed by a postal employee and they will tray-out letter class mail letters in trays and they will separate newspapers and they will separate little packages, they separate special delivery mail and that will be given special handling and while they are doing it or sometimes I am doing it or there present, we will separate any mail that looks to us suspicious or believe it to contain merchandise for further examination.

Q Did you do so in this case?

A Yes, sir, I did.

Q As a result of that inspection, what, if anything, [7] did you find?

A Well, I think I will have to be specific about what we are talking about here, sir, because I find a lot of stuff.

Q Let me rephrase that for you: Did you in fact intercept any letters on the particular day that I gave you?

A Yes, sir.

Q Did you intercept any letters on that particular date which were destined for the Washington area?

A Yes, sir.

Q How many of these? Do you have your report with you?

A Well, I have a report here. We are talking about 8 envelopes that we are talking about right now, but I may have had more. I really don't know, sir.

Q All right.

With regard to those 8 envelopes, how did you—how did they come to your attention?

A Well, I was on the belt and these envelopes were rather—from Bangkok, Thailand and they were rather bulky and I believed them to contain merchandise and what do I mean by merchandise?

Anything would be—anything that would be not paper, correspondence, but could be possible narcotics or other merchandise.

[8] Q What kind of postage did those letters have on them?

A They had, as far as I can recall, Thailaneze postage stamps.

Q Did you—do you inspect mail from all countries, sir?

A No, certain countries.

Q Is Thailand one of those countries?

A Yes, sir.

Q In fact, did you have occasion to seize letters from Thailand during this year, sir?

A Yes, I would say yes.

Q On how many occasions roughly?

A Well, prior to February 4, I can't really tell you how many we had, but as of now—as of the last day of September, we had 48-envelopes containing heroin from Thailand.

Q In regard to the eight envelopes addressed to the Washington area, what did you do?

A I took them to a specific area that I have for examining the mail. I felt the envelopes and later on I weighed one of the envelopes and it was like 42 grams which is rather heavy for an airmail envelope.

Q Excuse me. How much is—how much does any ordinary airmail envelope weigh?

A Well, an ordinary airmail envelope would weigh about [9] 7 grams or a quarter of an ounce, or let's say 14 grams, a half ounce, but 42 grams which is an ounce and a half is rather heavy.

Q I see.

A It also felt like there was something in there, in the envelope. It was not just plain paper that the envelope is supposed to contain.

Then I took one of the envelopes and opened it. In there I saw some cardboard and between the cardboard, if I recall, there was a plastic bag containing a white powdered substance, which, based on experience, I knew from Thailand would be heroin.

I went ahead and removed a sample. Gave it a field test, a Marquis Reagent field test, and I had a positive reaction for heroin.

Q Does your record reflect which envelope you opened first?

A No, sir, it does not.

Q What did you do with regard to the remaining seven envelopes?

A Well, the envelopes in a lot of ways were identical. Some of them had the same return address. They were all typewritten and they came from the same area and I proceeded to open the others.

Q Did you—could you explain for us whether in fact these letters are considered to be first class mail?

[10] A No, sir, they are not.

Q Could you explain why?

A Because foreign mail from abroad is classified as letter class mail and not first class mail.

Q All right.

A We have a regulation to that effect.

Q MR. REARDON: Your Honor, may I please have this exhibit marked as government exhibit No. 1?

(Government exhibit No. 1 was marked for identification.)

BY MR. REARDON:

Q I show you now what is marked as government 1 for identification. Do you know what that exhibit is?

A That is a part of the Code of Federal Regulations, Chapter I, Title 19 of the Code of Federal Regulations and Part 145.2 entitled "Mail Importations".

Q Are you familiar with that?

A Yes, sir, I am.

Q How do they affect your job?

A Well, it says here, "all mail originating outside the customs territory of the United States, whether sealed or unsealed, is subject to customs examination" and so on.

Do you want me to read all of that?

MR. REARDON: May I have the Court's indulgence?

THE COURT: Yes.

[11] MR. REARDON: Your Honor, the government has no further questions at this time.

CROSS-EXAMINATION

BY MR. PALMER:

Q Now, the particular envelopes that you opened, I take it you did not have a search warrant to open those envelopes, is that correct?

A Yes, sir, because I didn't need a search warrant because the regulations specify that we can.

Q In other words, there was no search warrant to open this mail?

A No search warrant issued.

Q Is that the customary procedure in New York City?

A We do it nation-wide, sir.

Q In other words, nation-wide, any mail could be gone into that goes into the post office that comes from without the country?

A Yes, sir.

Q That is always the same procedure? No search warrant is necessary?

A No search warrant is necessary.

Q Were you familiar, sir, that here in Washington, D.C., in Washington, three envelopes directed to this same address was seized pursuant to a search warrant without postal inspectors first going into them?

[12] MR. REARDON: I object to that, Your Honor. Counsel has—

THE COURT: The objection is overruled. He may proceed.

BY MR. PALMER:

Q In other words, sir, did you know that in this jurisdiction, Washington, a search warrant was obtained for the envelopes before any intrusion was entered into the letters?

MR. REARDON: I object to that, Your Honor, on the grounds of relevancy.

THE COURT: Your objection is noted for the record, and overruled.

BY MR. PALMER:

Q Did you know that, sir?

A No, sir, because if I may say, it is my job in New York City to intercept any mail that I believe to contain merchandise. I don't know what is going on in Washington or any place.

After I intercept it, I just turn it over to the Drug Enforcement Administration. I am not in an investigative capacity at all.

Q Thank you.

MR. PALMER: Would you mark this defendant's [13] exhibit 1, this affidavit dated February 7, 1974, which was given to me earlier by the government which is an affidavit in fact for three similar letters in this jurisdiction, which were obtained pursuant to search warrant prior to any nonwarranted intrusion.

THE COURT: For what purpose is it offered?

MR. PALMER: To show what the government thought proper in the Washington jurisdiction as to the necessity for a search warrant.

THE COURT: It will be marked as part of the record.

(Defendant's Exhibit No. 1 marked for identification)

MR. REARDON: I will object for the record, Your Honor.

THE COURT: Your objection is noted.

BY MR. PALMER:

Q These particular 8 envelopes and by the way. do you have a picture of them?

A I took some Zerox copies of the outside of the envelopes, yes.

Q Do you have those with you?

A Yes, sir.

Q May I see them?

A Yes. As a matter of fact, I have all the records pertaining to what we are talking here about.

[14] MR. PALMER: Does counsel for the government have an additional copy?

MR. REARDON: Yes, I have a copy. I can give counsel a copy. I don't have an additional copy for the Court at this time. I could pass mine up. I will pass this up so the Court may follow the testimony.

BY MR. PALMER:

Q Do you have copies here of each of the eight letters?

A Yes, I do.

MR. PALMER: Would Your Honor indulge me a moment? I have not seen this before.

THE COURT: Yes.

MR. REARDON: Might I note for the record that the Customs officer brought that to the office when he came down here from New York.

MR. PALMER: Does Your Honor have a complete set?

THE COURT: I don't know if it is complete, but it is a set supplied to me by the government.

MR. REARDON: That is the set that was given to me.

THE COURT: It appears to be a 20-page document.

MR. PALMER: This is defendant's exhibit No. 2.

(Defendant's exhibit No. 2 marked for identification)

[15] BY MR. PALMER:

Q Now, these 8 envelopes, were they taken by you all at the same time off of the conveyor belt, so-to-speak?

A More or less. The times are indicated on the upper righthand corner at what time I processed these envelopes and they were assigned seizure numbers.

Q Would these notes help you in your recollection?

A Yes, sir, these are my only records, sir.

Q Now, sir, when were these envelopes mailed in Thailand?

A That I don't know. I don't pay any attention to that.

Q Is there any way you can determine that from looking?

A Perhaps I could. I don't know. It is hard to make out now. There is a postage cancellation stamp. It is 30.0.17 on one of them.

Q Excuse me.

A 30.1.17 which would be the 30th of January and 17 would probably be the time of the day. The same thing on here.

If I may say so, judging, you know, on this—

Q Based on your experience.

A Based on my experience, they were intercepted on [16] February 4 and it was naturally mailed sometime in January, but one of the stamps indicates the 30th of January. That would be about the right time.

Q Now, are these letter type envelopes, were they airmail?

A Yes, sir.

Q They carried the right postage?

A That I don't know. I am a Customs official and not a post office official. I don't pay attention to what they —what the postage is.

Q Does it indicate that they do not carry the right postage?

A Not as far as I know.

Q Now, where did these envelopes first arrive in this country?

A Well, I wasn't there when they arrived. I assume that it was at Kennedy Airport.

Q And when did they arrive?

A That I do not know either.

Q Who would know exactly when these envelopes actually reached our territory?

A Well, I guess if somebody wanted to trace the receipt of mail, it would be the Postal Inspection Service, but since these letters were not registered, ordinary airmail, [17] there is no record being kept. Nobody could be specific as to when they entered the country.

Q Now, after arriving at JFK, how do they come into the country?

A I actually do not get involved in this, this procedure, but I have an idea as to how it does arrive. Are you interested in that?

Q Yes.

A All right. It would come on an airplane and it would get unloaded on to a post office truck and routed into the post office building at the Kennedy Airport. There they would make a distribution and if an airmail sack is addressed to New York, New York, it would remain in New York to be worked.

If it says Chicago, Illinois, it would be rerouted in another airplane and leave.

Q Now, the mail, for example, these eight pieces, when they arrive at their first point which is probably JFK, Kennedy Airport, that is also New York City, is that correct, sir?

A Yes.

Q And at that point, there are Customs agent there also?

A No, there are not. You see mail is—goes first into the post office. The post office will refer the mail to the [18] U.S. Customs Service for examination.

Q So at the first point of entry, there are no Customs personnel to examine the mail?

A No, sir.

Q Now, from there, JFK, for example, these letters would go where next?

A Well, some of the mail will be worked at Kennedy and some of the mail will be worked at the General Post Office depending how the airmail sack is labeled.

Like if it says New York City, it will come into New York City. It will be worked at the General Post Office. If it just indicates New York, New York, it will remain there and will be worked off there.

Q Now, these particular eight envelopes, where did they go from JFK?

A Well, that sack went into the General Post Office.

Q And do you know when that sack arrived at the General Post Office?

A No, sir, I don't know that.

Q Do you have any idea normally how long it takes to go from JFK to the General Post Office?

A I would say if it arrives in the morning, it probably would arrive there at the General Post Office the same day, sometime in the afternoon. I really don't know. It depends on a lot of things.

[19] It depends on traffic, weather, whether it is raining or not and what the backup is. What the backup of mail is.

Q All right.

Now, do you know as a fact that these eight pieces first arrived in the California area and then rerouted to New York. Do you know that?

A No chance. They would have been worked over there.

Q They would have been worked in that area?

A Right.

Q Now, did—

MR. REARDON: I am sorry. I did not hear the answer.

(The answer was read)

BY MR. PALMER:

Q Now, when these eight letters arrived, I take it you were stationed at the—

A At the General Post Office.

Q Is that in Manhattan?

A Yes, sir.

Q Foley Square?

A No, Manhattan across from the Penn Station, Madison Square Gardens.

Q All right.

[20] And what happened to this mail when it arrived there?

A Well, as I said before, the mail came into the building and probably went into the Registery Section, and the seal on the sack was broken and the registered mail was removed because they have to count the pieces that are registered and then the remaining mail was sent to my section for examination, the ordinary mail.

I received the sack, dumped the sack out and processed the mail and we discovered these envelopes.

Q Now, prior to you discovering each of these envelopes you had no knowledge of these envelopes in relation to Thailand or Germany or anything like that, did you?

A I—

Q You had no prior information about this case, did you?

A No, sir.

Q This was the first time that this came to your attention, these envelopes?

A Yes, sir.

Q You had seen—to your recollection, these addresses mailed to this country, you had not noticed them before?

A Nothing.

Q This was sort of a first time spot check as to these eight envelopes?

[21] A Well, if I may correct you, it is not a spot check. It is a normal procedure that we have. We will work certain countries and we will really scrutinize them.

Q All right. We will get to that.

In any event, to get to my original point, insofar as these eight envelopes are concerned, you had no prior information at all concerning these eight envelopes?

A Right.

Q Now, I believe you indicated that there were certain countries that you are associated with or concerned with, is that correct?

A Yes, sir.

Q I assume Thailand is one of them?

A Yes, sir.

Q And other Southeast Asia areas?

A Yes, sir. South America and Columbia, for instance, you know.

As I indicated before, we work the mails for various reasons. We have matter, pornography, for instance, which is prohibited by law and we enforce postal laws which prohibit the imporation of lottery mail, Irish Sweepstakes and so on.

We receive counterfeit money from Columbia which is also prohibited. Cocaine from there which is prohibited.

[22] We receive heroin from Thailand based on our experience.

Q Now, was it the entire sack of mail that was delivered to you?

A Yes, sir.

Q And the entire sack of mail was—

A Yes, we worked it off our distribution. It gets worked off and it goes—gets trayed out and goes to a section where postal employees will box up the mail and it gets delivered.

Q Was all this mail from Thailand?

A Yes, that was all mail from one particular country, from Thailand, in that sack, yes, but we were working other countries too.

Q I understand that. But this particular sack was mail from Thailand?

A Yes, sir.

Q All right.

Q And approximately how many pieces of mail were within that sack?

A I don't have the slightest idea, sir. I don't pay any attention to that.

Q Do you know, for example, whether—

A Well, for one thing, Thailand is not a big country. [23] Therefore, there was not that much mail from that country.

Q In other words, could these have been the only eight envelopes—

A No, sir, we had definitely more. Maybe we had 200 or 500 envelopes from that particular country.

Q Now, the normal procedure I believe you indicated was to do what?

A Thailand or any other mail we examine, we dump it out and on the conveyor belt and the mail is just loose and you have newspapers, books and you have small packages that are dutiable and so on and we have these different separations and while doing so, if there is anything that is not a package—a package will go to a certain Customs section for examination as to contents, but letters normally gets processed but if you feel a letter may also contain merchandise, we will put it aside, for example.

Q Now, the particular letters we have here that are marked as an exhibit, this is considered letter mail? Is that correct?

A Yes.

Q Airmail letter class mail?

A Yes, sir.

Q And such mail of this particular type if it were mailed within this country, is that the same equivalent as first class mail?

[24] A To my understanding, yes, sir, in the United States it is considered first class mail.

Q All right.

As far as you know, this particular eight envelopes, to your knowledge, carried correct airmail postage? Any signs of postage due or anything?

THE COURT: He said he doesn't know. He has already answered that.

THE WITNESS: You know, I don't collect the postage. I am there to examine the mail.

BY MR. PALMER:

Q Now, on the face of each one of these envelopes, did there appear to be so-called letter mail, as you looked at the envelope?

A Yes, sir, these are letters. They are various sizes like six and three-quarter inches by five and we have eight and a half by four and a quarter inches.

Those are the various sizes that we have.

Q Now, you indicated that you took one of them and opened up the envelope?

A Well, first of all, I examined the envelope from the outside because, you know, there is so much mail coming through that I just don't open mail without having a good reason to open it.

[25] I felt the envelope and it was rather bulky. I felt it by feeling it and I said to myself there is something else in there besides just plain paper, which is correspondence. Then I proceeded to open the envelope, yes, sir.

Q After having opened the first one, having done that, you went and examined and opened the other seven also?

A Well, they were identical. They looked as if they came—this is just my impression, but they looked like they came from the same place and so they did have a different return address.

One was New Star Studio and the other one had Corngold Jewelry Shop but they all looked like they came from the same typewriter.

MR. PALMER: Will Your Honor indulge me for one moment?

THE COURT: Certainly.

We will take a five-minute recess.

MR. PALMER: Thank you.

(Whereupon, a short recess was taken.)

BY MR. PALMER:

Q Now, sir, other than the fact that it is not your normal procedure to do so, as you have indicated, were there any rules or regulations to prevent, if you so desired, to prevent you from keeping these envelopes in your custody during [26] the time in which a warrant could have been obtained to open them up?

A I don't—

MR. REARDON: Your Honor, I don't think I understand that question.

THE COURT: Rephrase the question.

BY MR. PALMER:

Q Did you—

THE COURT: He has told you that it was not necessary. He has answered that question.

MR. PALMER: I understand that, Your Honor. I am getting to something.

THE COURT: All right.

BY MR. PALMER:

Q You indicated that normally your procedure, the Customs procedure, is not to obtain warrants, but to go into the mail coming into the country?

A Right.

Q Was there any rule or regulation whatever to prevent you from keeping this mail in your custody while a warrant could be obtained for it?

MR. REARDON: I will object to that question.

THE COURT: That is speculative and hypothetical. He has testified that that is not required.

[27] The objection is sustained.

BY MR. PALMER:

Q Now, after this sack of mail from Thailand was dumped and sorted out, you indicated that you opened first, after looking at it, one of these eight envelopes, is that right?

A Yes, I had to open one first.

Q At the time when you opened the first envelope, were you aware of the other seven?

A Yes, well, we had already culled out the envelopes that all appeared bulky and so we had—took them all aside and then I had to open one of them.

You were asking me before which one was opened first. I can give you that answer now. I have the time stamp when different envelopes were processed so, you know, I can give you that.

Q When was the first one opened?

A One was opened at 1:30. Well, I guess the one to Miss Shirley Hill was opened first. It was opened at 1:30 p.m.

Q One-thirty p.m.?

A Yes.

Q And that mail would have arrived at the post office about what time, sir?

A Sir, that mail would have arrived on Saturday—could have arrived on Saturday or Sunday because Monday was— [28] well, there is a shortage of work force on the weekend and mail just gets held.

Q The day it was opened, I take it, was February 4?

A February 4 was a Monday.

Q And this particular mail could have been there as long as from Saturday, is that correct?

A It could have, but not very likely because mail doesn't lay around that long. If it came in Sunday—as I said, it could have been Saturday.

Q Or it could have been Sunday?

A Right.

Q Or it could have been Monday morning?

A Monday morning from Kennedy Airport to arrive at the General Post Office would be too fast, not at 1:30. It was not Monday's mail. It must have been Sunday's.

Q This mail then arrived at the General Post Office at the latest on Sunday, is that right?

A At the latest, yes.

Q At the earliest on perhaps Saturday?

A Right.

Q Not on Monday?

A No, not on Monday.

Q Fine. Thank you.

Now, do you have Customs people working there on Saturday and Sunday?

[29] A Not in the particular operation that I have, the letter class examination of mail. We work Monday through Friday.

Q The other two days, Saturday and Sunday are the days off?

A The mail will be held aside, you know, and we come in Monday and we will work it.

Q Now, prior to this date of 4 February, 1974, during the course of your duties as a postal inspector and examiner of these items, had you prior to this date, intercepted and recovered narcotics from the mail from Thailand?

A I think so. I am pretty sure. I think we had some mail going into New York City originating in Thailand and therefore, based on that particular experience, we scrutinize mail from Thailand very carefully after that date and so I guess the mail arriving into New York City was prior to that.

Q Now, the prior experience or the incident that you speak about, was that a personal experience that you had or one that your subordinates had at the post office in New York?

A Well, I don't know how to interpret it. It is my personal experience if I discover narcotics in mail originating from a certain country that—well, I will scrutinize that mail more closely than—

Q That is not clear in my mind, sir. The prior [30] experience that you had with narcotics from Thailand on the earlier occasion, you believe there was such an experience?

A I think so.

Q Now, that prior experience, was one that you personally had in uncovering the narcotics yourself?

A Yes, sir, I am the only one opening that mail. I am the one that examines it.

Q I was not clear on that point.

Prior to the experience on the 4th of February, you believe that happened on one occasion or more than one occasion?

A I would say more than one.

Q So at least by the time of February 4, you were generally suspicious of letter mail coming from Thailand as a fact?

A Yes, sir.

Q And all mail so coming in from Thailand generally, you have this fact that raises a suspicion in your mind, is that correct, sir?

A Yes, sir.

Q I take it during the course of your regular duties, duties over the period of time indicated, that this particular airmail item appeared heavier in weight than most airmail letters, is that correct?

A Yes, sir.

[31] Q I take it during the course of your experience that airmail letters that have come in have also met the, for example, 42 gram standard?

A Oh, yes.

Q And on occasion you opened some of those, is that correct?

A Yes, sir.

Q And found no contraband, is that correct?

A No contraband, not dutiable merchandise, yes, sir.

Q All right.

So the 42 or the heavier weight caused you to go further because this was in fact Thailand which you generally have suspicions of at the beginning?

A It was—

Q The weight caused you to go further to the next procedure, is that correct?

A Yes, sir, the weight—If I may say, something else.

Q Surely.

A It is the—it is possible that in the past I had received similar envelopes this size or something. It is not necessary just the weight. You sometimes get narcotics today and then a month from now, from that

same country, you get another shipment and you say, I already got that because you [32] recognize that, some similarity, but the weight in itself would make me check it.

Q Raise a suspicion?

A Yes, sir.

Q In other words, is it fair to categorize this as intuition or intuitive?

A Yes, sir.

Q All right.

Now, you then—

MR. REARDON: Your Honor, I just want to, for the record, counsel is now—perhaps this is better left for argument, but counsel is characterizing—trying to raise an opinion from a man but the facts of the case in terms of art and the repetition of 42 grams is not essential.

MR. PALMER: Your Honor, I would say in my review of the case, this is an important factor.

THE COURT: You may proceed.

MR. PALMER: Thank you.

BY MR. PALMER:

Q And then this first letter you felt it?

A Yes, sir.

Q And it appeared to be—what did it appear to be?

A It appeared to be bulky. As I said before, it later turned out to weigh approximately 42 grams which is an ounce and a half. It was just a bulky envelope that I felt contained something.

[33] You know, if you wanted me to be specific, based on my experience, I would say this is Thailand and possibly heroin.

Q Now, when you felt the outside of the envelope, it was—you said the material was covered by a cardboard?

A Yes, I am referring to my notes. The heroin was contained in one glassine bag that was placed between two pieces of cardboard.

Q So when you felt the outside, you felt a hard cardboard substance?

A Yes, but on the other hand, if you have enough experience as I have, it is a white powdered substance and it does move. It doesn't stay flat. You shake the envelope and it falls into one particular spot. You know there is something in it. It just moves. It is not the cardboard you feel alone.

Normally we would just feel the cardboard. It is very difficult to feel through the cardboard, but you shake it a little and it moves.

Q How about in this particular case?

A I can't recall that at this time. I am just talking from general experience.

I think this is probably what happened.

Q Try to recollect the facts a. they occurred. I understand your problem. Try to recollect this particular case, [34] what happened in this case.

You indicated you felt it and you could feel the cardboard?

A Yes.

Q Do you know if in fact you felt anything else?

A Well, sir, I really didn't say that I felt the cardboard. I just felt it was bulky. There is something in there I can't tell whether it is cardboard or any other wrapping.

Q You can't say you felt it to be powder or anything like that? The essential thing was the bulky feeling?

A Yes.

MR. REARDON: He said it all went to one side.

MR. PALMER: He didn't say that.

THE COURT: Let the witness speak for himself.

MR. REARDON: I just wanted to make my objection for the record.

THE WITNESS: Well, sir, this dates back to February when I intercepted this and I intercept so many that I can't remember exactly what I did in that particular case, but the normal procedure is for me, from a certain country, weight of the envelope, bulkiness and then if the contents move, I feel it and if it moves, I know there is something in there that is not correspondence. It is

merchandise and I have to open it to check it out.

[35] I didn't know what was in there.

BY MR. PALMER:

Q And you said the main fact—strike that, Your Honor.

Now, sir, approximately how many pieces of mail do you open a day in that section?

A That is very difficult to tell too because it depends on how many narcotics, narcotic interceptions you make in one day.

If you have narcotic interceptions, which you have to open very carefully, you have to field test it and replace the contents back and all this. You have to make a record. You really can't process that many.

If you don't have it, you can work several hundred a day.

Q You might open 700 pieces of mail a day?

A Several.

Q Are you opening them in this fashion?

A Well, I do so many things. We have pornography. We have lottery. I do all these things and I didn't always open but they are also interceptions. I can't give you a definite figure.

Q I realize that. Approximately a couple hundred are opened? Approximately a couple hundred are opened a day by [36] yourself?

A Yes, possibly.

Q And of these couple hundred that are opened a day, approximately, what percentage contains contraband?

A I don't know. I don't keep a record.

Q Are many of the envelopes you open not subject to scrutiny?

A Well, some of them are not suspect seizure. If I may give you an example and if I get a mail article from a country and you want me to specify, I will say from Mexico and we know that Mexico is sending in marihuana through the mails, and I feel it and it feels like marihuana I open it and it turns out to be a hair net. That I could not tell from the outside. I have to open it to determine what is dutiable or contraband.

Q And that happens on many occasions, doesn' t it?
A It does happen, yes.
Q All right.
MR. PALMER: Will Your Honor indulge me?
THE COURT: Yes.
MR. PALMER: I have nothing further of this witness.
MR. STEIN: I have a few questions, Your Honor.

BY MR. STEIN:

[37] Q I think you indicated—I think I will call you Mr. K and that your employees stopped working on Friday and come back to work on Monday. Is that correct?
A Yes, we close the section.
Q Is that your schedule as well?
A That is my schedule. The post office normally will work all seven days, but since I am not present and we are dealing in this type of mail; for various reasons, I have to be present when this mail gets worked.
Q You work five days a week?
A Yes.
Q So when you were discussing before or trying to ascertain how long these particular envelopes may have been in the post office, I think the range was from early Saturday until Sunday?
A That is right.
Q How about Monday morning?
A Not Monday morning because—
Q Is it also possible then as early as late Friday or a time when you might go home, there would be some pieces left over?
A You see, on Friday it is our procedure, you know, we have our schedule arranged in such a way that when we leave on Friday, whatever mail is present in our particular working area [38] or section, it gets worked out.
Q Is that always the case?
A Not always.

Q Sometimes stuff is left over?
A Yes.
Q You don't kow if that is the case here or not?
A In most instances we don't have any mail left over.
Q You referred several times of opening up this mail, various types of mail.
Will you describe how that is done? How do you open an envelope?
A Well, I try to be very careful in opening an envelope.
Do I have to tell you in detail how I do that?
MR. STEIN: Your Honor, I think this is a really important question. It goes to the invasion of privacy issue. I think how they do it, why they do it, can be very important.
THE COURT: If you think it is important, you may proceed.
MR. STEIN: Thank you.
THE WITNESS: Well, I usually have a very primitive tool, an ice pick and I just peal the flap open very carefully and remove the contents and examine them and like in this [39] particular case, it goes up for control delivery and I reseal it as carefully as I open it.

BY MR. STEIN:

Q In other words, you try to open the gum area?
A Oh, yes, I do not take the knife and cut it.
Q And if there is no contraband of any kind, you would reseal that gum, is that correct?
A I would reseal the gum and indicate it has been examined by Customs.
Q How would you do that?
A We have a stamp.
Q So the person that eventually gets this mail, knows that you searched the mail?
A Yes.
Q Now, you mentioned the fact that you roughly went through 200 pieces of mail a day, an average day, opened them up, is that right?

A On some days, 200 and some days just a few. Maybe I didn't understand. An examination doesn't necessarily mean that I will open every envelope. I may examine it just by touching and looking at it. I am not going to open every piece.

Q You don't use your ice pick every time—

A Oh, no.

Q How many times a day do you use your ice pick, roughly?

[40] A Well, I have had instances where I intercepted 78 envelopes containing narcotics, heroin, cocaine and then all 78 had been opened. Maybe a few more than that, maybe ten or fifteen envelopes that turn out to be, as I said before, either a hair net or sand from a beach in Jamaica that felt like a powder and it turned out to be sand from Jamaica.

Q Now, you indicated a stamp indicating the fact that it had been opened by an official?

A Yes.

Q A rubber stamp that you put on personally?

A Well, I don't necessarily do that personally.

Q Somebody does?

A Yes.

Q About how many of those are stamped a day or is there a record of that?

A No record kept.

Q Well, these would be the ones where no contraband is found and where your suspicion was not borne out, is that right?

A True.

Q Would it be fair to say that would be in the majority of the ones that you open?

A Well, that is difficult to say. On some days it would be the majority and on some days, not. Like in this [41] particular case we had on that particular date, these envelopes were eight coming in and they all looked suspicious and they all turned out to contain heroin.

On that particular day, processing took quite some time. If it was in the afternoon, it probably took that

afternoon. I probably didn't do anything else but process these eight envelopes. It is difficult for me to answer.

Q I understand that. But it is not improbable that every day before you opened one of these envelopes, you already stamped or somebody caused to be stamped, many envelopes where there was no contraband?

MR. REARDON: Your Honor, I will object to that.

THE COURT: Objection is overruled.

BY MR. STEIN:

Q You don't use any sort of X-ray device?

A In this particular section, no.

Q You do not.

A I do not.

Q And the final question I would have is that I think you said one of the reasons you said you were suspicious was because it didn't feel like there was correspondence or letters in the envelopes. Is that correct?

A Yes.

Q All right.

[43] Q Now, in enforcing certain regulations, among them is there one which makes it illegal to put something in an envelope other than correspondence?

A Well, in an—

Q Is one required to correspond, is what I am saying, when they send a letter from another country into the United States?

A What I meant to say is that if there is paper in there, writing correspondence, then I know there is no merchandise in there and in this particular case I felt there was something in there. I had to check that out.

MR. STEIN: I have no further questions.

MR. REARDON: Just one or two.

REDIRECT EXAMINATION

BY MR. REARDON:

Q Sir, would you please describe the conditions of the envelopes, these eight pertinent envelopes, that you

saw and examined on the day in question; that is, was there any indication that they had been opened before?

A No, sir, those envelopes had not been opened before.

Q Why do you say that?

A Well, if the envelopes had been opened or if the envelopes had been damaged somehow, I would have made a notation in my records on that. I know and testify enough in court that [44] these questions will be asked of me.

I make a record to that effect. I didn't and so therefore I say no.

MR. REARDON: No other questions.

THE COURT: You may step down.

* * * *

THE COURT: In consideration of the motion to suppress tangible evidence, the opposition to the motion, the review of the authorities, after argument of counsel and the testimony of Mr. George Kallnischkies, the United States Customs Official from New York City, the motion to suppress the tangible evidence is denied.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Criminal Case No. 623-74

UNITED STATES OF AMERICA

v.

CHARLES W. RAMSEY, ET AL.

ORDER

After having reviewed carefully both the written motion of defendant Ramsey to suppress certain physical evidence in this case seized by United States customs officials on February 4, 1974, as well as the written opposition of the Government, and

Further, having heard and considered fully the oral argument of both parties in this matter, it is now this 1st day of November, 1974,

ORDERED, that the motion of defendant Ramsey to suppress the physical evidence seized by United States customs officials on February 4, 1974, is hereby denied.

/s/ [Illegible]
Judge

EXCERPTS FROM THE STIPULATION AT TRIAL

SECTION V; EVIDENCE RE: RELEVANT EVENTS OF FEBRUARY 2 — FEBRUARY 15, 1974

This Section concerns events from the date of the February 2, 1974, arrests of Bailey and Ward in Bangkok, Thailand, through the arrests of Ramsey and Kelly in Washington, D.C., including: the independent interdiction by customs authorities of eight letters filled with pure heroin in New York City on February 4, 1974; the interception of three more such envelopes at the main Post Office in Washington, D. C., on February 7, 1974; the subsequent surveillance on three local addresses on February 12, February 13, and February 14, 1974; and the pertinent seizures made incident to Ramsey's and Kelly's arrests, both on February 14 and February 15, 1974.

A. Evidence surrounding the interception of eight letters in New York on February 4, 1974.

On February 2, 1974, after Bailey and Ward had been arrested and certain evidence seized, (see Section IV, *supra*) Agent George Shoaf composed a cable in order to notify the National Headquarters of the Drug Enforcement Administration of the recent Thai developments. This cable was received by the Drug Enforcement Administration in Washington, D. C., on February 4, 1974.

Contemporaneously and independently on this same date in New York City, Customs Officer George Kallinischkies (see transcript of Motion to Suppress on October 1974, at page) intercepted and seized eight envelopes addressed to four D.C. area locations (Government Exhibits No. , , ,) from the mail. In accordance with his training and duties, he then performed a field test on a small portion of the white powder enclosed in each of the envelopes. The positive results of these preliminary chemical tests indicated the presence of heroin in each envelope. Mr. Kallinischkies thereafter at the request of the Drug Enforcement Administration initiated the controlled delivery which was to be executed on February 14, 1974, in Washington, D.C. He placed the eight envelopes in a special mail pouch and secured it with a rotary type lock number R 88592-81. Access to a lock of this type is limited to few Postal Office Employees. The pouch itself was placed inside another iron locked container and sent on its otherwise normal course to Washington, D.C.

On February 5, 1974, Agents John Atlee and John Landrum received the identities of the D.C. area addresses and addressees listed on the eight intercepted envelopes. Two envelopes were sent to each of the following addresses:

1.) Continental Printing Company
1125 D St., N.E.
Washington, D.C. 20002

2.) Miss Mary Richardson
311 Rock Creek Church Rd., N.W.
Washington, D.C. 20011

3.) Miss Shirley Hill
5109 Mann
Deanwood, Maryland 20027

4.) Miss D. Kelly
1622 Perry St., N.E.
Washington, D.C. 20018

"1125 D St., N.E." has already been discussed, *supra*, in Sections I, III, and IV. Reference to "311 Rock Creek Church Rd., N.W." similarly is found, *supra*, in Sections I and Section IV. Government witness Charles Adams, who has resided at this address since December 10, 1973, has no knowledge of the existence of the purported addressee "Mary Richardson." Mr. Mark Coppedge, who resided at the address between 1970 and December 9, 1973, also has no such knowledge. Charles Adams, as mentioned, *supra*, was the co-lessee, along with defendant Kelly of the "R & R Barber Shop," 908 9th Street, N.W., Washington, D.C.

5109 Mann Street, Deanewood, Maryland is the address of a private home owned by government witness Napolean Hill. Mr. Hill is the estranged husband of government witness Martha Hill who is the sister of defendant Kelly. Mrs. Hill was arrested along with her brother, Dorothea Ellis, her brother's common law wife, and defendant Ramsey on February 14, 1974 in the immediate vicinity of 13 S Street, N.E., Washington, D.C. At the time of her arrest, she was seated in her automobile.

Mr. Hill himself had known defendant Kelly for over thirty-three years. In fact, during the summer of 1973, after Kelly had left Lorton, Virginia, Mr. Hill let him stay at his home for approximately six weeks. Both Mr. and Mrs. Hill deny ever knowing anyone by the name of addressee "Shirley Hill". For Mr. Hill's reaction and the search of his house following the arrest of Kelly, see this section, part E, *supra*.

1622 Perry Street, N.E. is a non-existent address. However, immediate members of defendant Kelly's family have resided at 2216 Perry Street, N.E. for many years. Both government witnesses Thomas Kelly (brother of defendant Kelly and the resident at all times material to the instant case) and Martha Hill confirm this fact. The addressee on all eleven pertinent letters (see Section IV, *supra*, at) including the two seized by Mr. Kallinischkies was Miss D. Kelly. Dorothy Ann Ellis has lived at all times material to the case with defendant Kelly at 1803 Belle Haven Drive, Apartment 302, Landover, Maryland. The phone number 301-341-5372 was at all times material to this case listed and billed to "D. Kelly, 1803 Belle Haven Drive, Apt. 302, Landover, Maryland 20785 (Government Exhibit #). The relevant lease agreement for 1803 Belle Haven Drive, Apt. 302, itself, names "James W. and Doretha E. Kelly" as the tenants (Government Exhibit #). The lease was signed on February 2, 1973, by "James W. Kelly and Doretha Ann Kelly" who had purportedly been married for 18 months at the time of the execution of the lease. Defendant Kelly's and Miss Ellis' signatures on the lease have both been positively identified by handwriting ex-

pert W.A. Schullenberger of the United States Treasury Department. Moreover, a 1973 Georgetown University wage and tax statement seized pursuant to a United State's Magistrate's search warrant on February 14, 1974 contained the name D. Ellis and a home address of 2216 Perry Street, N.W., Washington, D.C. Charles Adams of 311 Rock Creek Church Road, N.W., was listed in the lease application as both the work supervisor over and personal reference of defendant Kelly.

On February 5, 1974, Agents Landrum and Atlee alerted the United States Postal Inspector Richard Hall of the New York Customs seizure of the eight envelopes. A complete description of the envelopes seized—including those in Bangkok, Thailand—was given to Inspector Hall. Subsequently, on February 7, 1974, Inspector Hall notified Agent Atlee of the interception and temporary detaining under controlled conditions at the Main United States Post Office in Washington, D.C. of three brown bulky envelopes addressed to "Continental Printing Company, 1125 "D" Street, N.E." bearing Thai postage; the label "airmail" stamped in red; and measuring six and three quarters inches by four and one-half inches. Inspector Hall further related that approximately thirty envelopes met a description of the above three envelopes had been delivered to Continental Printing Company, 1125 "D" Street, N.E., since December 1973. This information was the result of an interview with Willie Askew, the postal carrier for the address.

On February 7, 1974, Special Agents Landrum and Atlee obtained a United States Magistrate's Search Warrant for the three envelopes intercepted and retained by United States Postal Service at Main Post Office, N. Capitol and Massachusetts Avenue, N.W., Washington, D.C. On the same date, Special Agents Landrum and Atlee, after serving the warrant on Postmaster Simms, Main Post Office, Washington, D.C., searched the envelopes, conducted a field test on the white powder, and received a positive reaction on the Marquis reagent for an opiate drug. Drug Exhibits #3, 4, and 5, addressed to Continental Printing Company, 1125 "D" Street, N.E., were seized pursuant to the warrant. They were trans-

ported to the Washington District Office on the same date, stored in a locked cabinet, and delivered to Region 4 Laboratory on February 12, 1974 by Special Agents Landrum and Atlee. On February 13, 1974, Region 4 Laboratory advised Washington District Office that drug Exhibits #3, 4, and 5 contained heroin hydrochloride in the following respective amounts: 92.5%, 75.4% and 84.6%. The containers (drug Exhibits #3A, 4A and 5A, respectively) were transported to the Federal Bureau of Investigation Laboratory on February 26, 1974 for fingerprint analysis.

On February 12, 1974 under controlled conditions, Postal Inspector Hall received from the Main Washington D.C. Post Office, Union Station Section rotary lock pouch #R88592-81. Inspector Hall opened the lock—thereby adding one digit to the number—and retrieved from within the pouch all eight letters intercepted in New York on February 4, 1974.

On the same date, after having obtained a United States Magistrate's Search Warrant for the eight envelopes, Agents Atlee and Landrum then conducted in the view of Inspector Hall the same type of preliminary chemical analysis of a small portion of white powder in each of the eight envelopes as had Customs Officer Kallinischkies. Like the earlier one, these tests also indicated the presence of heroin. Thereupon, the agents, to safeguard the valuable narcotics evidence while unhindering the planned controlled delivery of the eight envelopes, removed all but approximately one-half gram of the suspected heroin from each of the eight envelopes. The original powder removed from each envelope was then placed in a corresponding evidence envelope and identified fully by address. They were at that time designated and remain as government drug exhibits 6 through 13. (Drug Enforcement Administration Laboratory Numbers are #28894, 28895, 28896, 28897, 28898, 28899, 288900, and 28901) Drug Enforcement Administration chemist Earl F. Parrish—a veteran expert in the field of identifying the presence and percentage of heroin, who had in this capacity testified numerous times in this Court, anal-

ysed government drug exhibits 3 through 13. While the individual analysis of each drug exhibit is of course being submitted to the court, a summary of Mr. Parrish's findings on these drug exhibits is as follows:

Exhibit	Lab #	Cross Wgt. (gms)	Net Wgt. (gms)	Drug	Purity
(Exhibits #1 and #2 were obtained in an earlier phase of this investigation and are not applicable to this prosecution.)					
3	28891	40.7	17.240	Heroin	92.5
4	28892	37.6	14.490	Heroin	75.4
5	28893	38.9	15.640	Heroin	84.6
6	28894	36.5	13.330	Heroin	74.7
7	28895	39.0	15.790	Heroin	91.0
8	28896	45.3	22.190	Heroin	77.3
9	28897	40.7	17.760	Heroin	92.3
10	28898	33.5	10.570	Heroin	83.3
11	28899	40.2	17.100	Heroin	85.5
12	28900	40.4	17.300	Heroin	87.9
13	28901	38.6	15.090	Heroin	78.5

Agents Atlee and Landrum as witnessed by Inspector Hall then substituted lactose for the seized a portion of heroin in each of the eight original containers which were and still are designated as government Exhibits 6A through 13A. The newly formed mass of each of these eight original envelopes contained therefore a large portion of lactose and a small portion of suspected heroin. Each quantity of powder was then and continues to be designated as Government Exhibit 6 "substitute" through Exhibit 13 "substitute" (corresponding Drug Enforcement Laboratory Numbers 28907, 28930, 28931, 28907, 28908, 28908, 28908) Drug Enforcement Administration Chemist Parrish examined these exhibits with the following results:

Envelope	Address	Drug Exhibit	Lab #	Gross Wgt	Net Wgt	Purity
6A	1125 D St., NE	6-substitute	28907	62.2	37.870	0.3
7A	1125 D St., NE	7-substitute	28907			
8A	1622 Perry St., NE	8-substitute	28930	101.9	47.270	1.4
9A	1622 Perry St., NE	9-substitute	28931	71.3	29.680	1.6
10A	311 Rock Creek Church Rd., NW	10-substitute	28907	45.8	22.720	0.2
11A	311 Rock Creek Church Rd., NW	11-substitute	28908	61.2	38.110	0.4
12A	5109 Mann St. Deanwood, Md.	12-substitute	28908	70.2	47.140	0.1
13A	5109 Mann St. Deanwood, Md.	13-substitute	28908	69.7	46.640	0.2

All the above exhibits drug content was heroin.

All the above exhibits except 8A and 9A were in fact delivered under controlled conditions on February 14, 1974.

After completing the substitution—during which he had noticed the initials of Customs Officer George Kallinischkies inside each envelope—Agent Landrum himself initialed the interiors of all eight envelopes. Thereafter, the agents resealed the eight envelopes and allowed them to remain in normal postal channels in anticipation of the controlled deliveries which were to occur two days later on February 14, 1973. Before the ultimate controlled deliveries, Inspector Hall, in the presence of Agent Landrum, placed flourescent powder in each of the envelopes.

B. The surveillance of February 12, 1974

On February 12, 1974, Special Agents of the Drug Enforcement Administration initiated surveillances at the following addresses:

Special Agent	Addresses
Michael Grimes	1803 Belle Haven Drive, Landover, Md.
Larry J. Carrol and Thomas J. Salvatore	5109 Mann St., Deanewood, Md.
Thomas T. Sheehan and Ernest L. Staples	1125 "D" St., N.E.
J. James Rivera	311 Rock Creek Church Rd., N.W.

At approximately 11:15 A.M., on that date, Special Agent Grimes initiated surveillance at the above address. At that time, Special Agent Grimes observed the following vehicles in the vicinity of 1803 Belle Haven Drive: a 1972 green Mercury Cougar, Maryland Registration # PG-2809; and a 1966 black over red Cadillac, Washington D.C. Registration # 988-189. A check with Washington, D.C. Department of Motor Vehicles revealed that the D.C. Registration # 988-189 is listed to Clifton M. Boykins at 1230 13th Street, N.W., Apt. 914, Washington, D.C., on a 1966 black/red Cadillac. At approximately 11:30 A.M., Grimes observed a 1972 silver-gray Lincoln, Mark IV, D.C. Registration #921-415, park in front of 1803 Belle Haven Drive. At this time, he saw a black male whom he later identified from police photographs as defendant James W. Kelly, exit the passenger side of the Lincoln and carry a brown paper bag into 1803 Belle Haven Drive. Agent Grimes took pictures at this time with a Nikon camera mounted with 300mm lens (Government Exhibit # ————). The Lincoln then departed the area. A check with D.C. Department of Motor Vehicles disclosed that D.C. Registration # 921-415 is listed to Thomas Henry Young, 3224 19th Street, N.W., Washington, D.C. The above Lincoln is documented as a vehicle exclusively utilized by Charles W. Ramsey, although registered to Thomas Young. Agent Grimes was unable to fully view the driver of the Lincoln on February 12, 1974, but could see clearly enough into the Lincoln to determine the driver was a heavy-set black male with short hair. At approximately 12:35 P.M., he observed Kelly and a black female, later identified via police photographs as Doretha A. Ellis, depart 1803 Belle Haven Drive. He observed Ellis enter the Cougar, Maryland Registration # PG-2809 while Kelly entered the Cadillac bearing D.C. Registration #988-189. He followed both vehicles for approximately ¼ mile to the vicinity of Sheriff Road, where both vehicles stopped on the shoulder of the road. At this time, he saw Ellis and Kelly switch automobiles. Both vehicles then continued on Sheriff Road for approximately ½ mile under his observation. At that time, they again

pulled off onto the shoulder of the road. He saw Ellis and Kelly again switch vehicles so that each was in the vehicle she/he had at the beginning of this surveillance. Shortly thereafter, Agent Grimes lost contact with Kelly, who was driving the red Cadillac, but maintained contact with Ellis in the Cougar. He followed Ellis to Citizens Bank and Trust Company, George Palmer Highway and Sheriff Road, Maryland, where he observed Ellis make a cash deposit. Contact with Ellis was lost shortly thereafter. At approximately 1:00 P.M. this date, Special Agents Carroll and Salvatore observed a black male wearing a dark shirt or pullover knit sweater and fur cossack type hat, park a black over red two-door Cadillac in front of 5109 Mann Street, Deanewood, Maryland (an address to which two of the heroin laden envelopes were destined). Special Agents Carroll and Salvatore then observed the above black male exit the Cadillac walk over the mailbox located on a fence at 5109 Mann Street, and check the mail box by placing his hand in its vicinity. Special Agents Carroll and Salvatore observed the black male immediately return to the red Cadillac and depart the area. Because of the actions of the driver of the red Cadillac, Special Agents Carroll and Salvatore did not maintain surveillance or get close enough to the automobile to obtain a registration number. At approximately 1:12 P.M. this date, Special Agent Staples observed a black male later identified by him via police photographs as defendant James W. Kelly, park a two-door black over red Cadillac, D.C. Registration # 988-189 in the vicinity of 1125 "D" Street, N.E. (Special Agent Staples took pictures of Kelly and the Cadillac at this time, designated Government Exhibit # ———). Special Agent Staples observed Kelly wearing a tan coat with a dark fur collar and fur cossack type hat, and carrying a manila envelope, exit the red Cadillac, walk over to the front door of 1125 "D" Street, N.E. (an address to which heroin-laden envelopes were destined) open the door with a key, and enter the building. Special Agent Staples noted Kelly appeared to thoroughly view all vehicles and persons near him as he proceeded toward

the entrance of 1125 "D" Street, N.E. At approximately 1:20 P.M., Special Agent Staples saw Kelly depart 1125 "D" Street, N.E., carrying what appeared to be the same manila envelope noted above, enter the red Cadillac, and proceed north on 12th Street, N.E. At approximately 1:45 P.M. that same date, Special Agent Rivera observed a two-door black over red Cadillac park in the vicinity of 311 Rock Creek Church Road, N.W. (another address to which two heroin-laden envelopes were destined). Special Agent Rivera saw a black male later identified as defendant James W. Kelly, wearing a tan coat with fur collar and fur cossack style hat exit the aforementioned Cadillac, walk to the front door of 311 Rock Creek Church Road, N.W., open the front door in which there was a mail slot, and bend over as if to reach for something on the floor immediately in front of him. Defendant Kelly then shut the door, returned to the Cadillac and departed the area under the observation of Agent Rivera. At approximately 3:45 P.M., Special Agents Carroll and Salvatore observed the two-door black over red Cadillac, previously seen by them at approximately 1:00 P.M. that date, return to 5109 Mann Street, Deanewood, Maryland. They observed the Cadillac with approximately four passengers park in the driveway of 5109 Mann Street. At the time, grocery type packages were seen taken into 5109 Mann Street by the occupants of the red Cadillac. Special Agents Carroll and Salvatore observed a black male wearing a tan coat with fur collar and fur cossack style hat among the occupants of the red Cadillac. Special Agents Carroll and Salvatore were joined by Special Agent Grimes at approximately 4:00 p.m. At that time, Special Agent Grimes drove past the Cadillac and noted that the registration was D.C. #988-189. Special Agent Rivera joined Special Agents Carroll, Salvatore and Grimes a short time later and identified the red Cadillac as the same vehicle he (Rivera) had seen earlier that date (at approximately 1:45 p.m.) at 311 Rock Creek Church Road, N.W. An unidentified black male was observed by the above Agents to wash the red Cadillac. Surveillance was discontinued shortly thereafter.

C. The surveillance of February 13, 1974

On February 13, 1974, surveillance was established at the following addresses by Sepecial Agents of the Drug Enforcement Administration:

Special Agents	Addresses
Thomas Sheehan	1125 "D" Street, N.E.
Carroll, Salvatore and Grimes	5109 Mann Street Deanewood, Maryland

At approximately 12:10 p.m. that date, Special Agent Sheehan, who was maintaining a stationary surveillance at 1125 "D" Street, N.E., from the interior of a government surveillance truck, saw individuals he knew to be defendants Ramsey and Kelly in a green 1972 Dodge Swinger, Maryland Registration #KS-9927 parked behind his truck which was across the street from 1125 "D" Street, N.E. Kelly exited the driver's side of the Dodge with a small black dog and walked East on "D" Street, while Ramsey remained seated in a slumped position in the vehicle. Special Agent Sheehan noticed that Kelly appeared to thoroughly view all persons and vehicles in the vicinity of 1125 "D" Street, N.E., and to pay particular attention to his surveillance vehicle. Agent Sheehan then observed Kelly return to the Dodge and place the dog therein. At this time, he saw Kelly walk to the entrance of 1125 "D" Street, N.E., take a key from his pocket, unlock the door, look around the street briefly and enter the building. A short time later Special Agent Sheehan observed Kelly leave 1125 "D" Street, N.E. and rejoin Ramsey in the Dodge. Ramsey and Kelly then pulled along side the government truck, stopped and visually inspected the truck. They then proceeded East on "D" Street to the intersection of 12th Street, turned North and again stopped. At that time, Agent Sheehan noticed that both Ramsey and Kelly stared in the direction of the surveillance truck. Shortly thereafter, Ramsey and Kelly proceeded North on 12th Street, out of the view of Agent Sheehan. Approximately three minutes later, Agent Sheehan again observed Ramsey and Kelly coming East on "D" Street, N.E. in the

Dodge Swinger. The driver, Kelly, drove slowly past the surveillance vehicle and visually studied it closely again while Ramsey slumped in the passenger seat obviously trying to avoid being observed. Agent Sheehan observed the Dodge proceed to the intersection at 12th Street, turn South and disappear from view. At approximately 12:40 P.M. that date, Special Agents Grimes, Carroll and Salvatore saw Ramsey and Kelly in the Dodge Swinger, Maryland Registration # KS-9927, stop in front of 5109 Mann Street, Deanewood, Maryland. At that time, the above Agents saw Kelly exit the driver's side of the Dodge Swinger and walk over to the mailbox located at the fence of 5109 Mann Street. He opened the mailbox; looked in it; and then closed it.

Kelly re-entered the Dodge Swinger and proceeded to the 1300 block of H Street, N.E., under observation of Special Agents Grimes, Carroll, Salvatore and Mangan, who joined the other Agents then during the moving surveillance. The above Special Agents then observed Ramsey enter 1341 H Street while Kelly remained in the Dodge Swinger. Approximately 10 minutes later, Ramsey was observed by the above Agents to exit 1341 H Street and rejoin Kelly in the Dodge Swinger. The above agents then followed Kelly and Ramsey to the vicinity of Florida Avenue and New York Avenue, N.E., where contact was lost in heavy traffic. The car in which Ramsey and Kelly were riding on this date was listed to Kelly's sister, Martha Hill, and is the same car used by Kelly, et al. on February 14, 1974 to make his mail rounds.

D. The surveillances of February 14, 1974:

On February 14, 1974, at approximately 9:00 a.m., United States Postal Inspectors Richard Hall, E. D. Strasburg, and H.L. Stuart met with Special Agents of the Drug Enforcement Administration in order to make final preparations for controlled deliveries of six of the eight New York intercepted heroin letters[1] (Drug Ex-

[1] Officials did not execute delivery of the two letters sent to Miss D. Kelly at 1622 Perry St., N.E. because there was no such address.

hibits Six Substitute, Seven Substitute, Ten Substitute, Eleven Substitute, Twelve Substitute, and Thirteen Substitute) to three Washington area addresses: 1125 D Street, N.E., 311 Rock Creek Church Road, N.W., and 5109 Mann Street, Deanewood, Maryland. Florescent powder was placed in each envelope which was to be delivered. Postal Inspector Hall maintained custody of the two heroin envelopes which were addressed to Continental Printing Company, 1125 D Street, N.E., Washington, D.C. (Exhibits 6A and 7A, containing Drug Exhibits 6 Substitute and 7 Substitute, respectively) and transferred custody of four other heroin envelopes as follows:[2] Postal Inspector E. Strasburg—two envelopes (Exhibits 10A and 11A, containing Drug Exhibits Ten Substitute and Eleven Substitute, respectively) addressed to Miss Mary Richardson, 311 Rock Creek Church Road, N.W., Washington, D.C.; and Postal Inspector H. L. Stuart—two envelopes (Exhibits 12A and 13A, containing Drug Exhibits Twelve Substitute and Thirteen Substitute, respectively addressed to: Miss Shirley Hill, 5109 Mann Street, Deanewood, Maryland.

Custody of the aforementioned exhibits was transferred to U.S. mail carriers in the vicinity of the appropriate address on February 14, 1974. At approximately 11:00 a.m., Postal Inspector Hall, as witnessed by Special Agent Staples, transferred Exhibits 6A/Six Substitute and 7A/Seven Substitute to mail carrier Willie Askew at 10th and D Street, N.E. Special Agents Staples and Sheehan then observed Askew deliver the letters to 1125 D Street, N.E., at approximately 11:07 a.m. Mr. Askew put the envelopes through a door slot in the front door of the

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Apparently the Kelly family home Perry St. number "2216" was erroneously transposed by Bailey when she shifted her operation from Aschaffenburg, Germany to Bangkok, Thailand in late January of 1974.

[2] A copy of a U.S. Post Office form entitled, "Chain of Custody for Seizure to be used as Court Exhibit in Criminal Case," reflects the chain of custody on the aforementioned exhibits from their interception by U.S. Customs, New York, New York, to the postal carriers who completed the controlled delivery (Government Exhibit No.).

address. At approximately 11:12 a.m. Postal Inspector Strasburg, as witnessed by Special Agents Julian Lindenauer and Kenneth Knorr, transferred Exhibits 10A/Ten Substitute and 11A/Eleven Substitute to mail carrier Robert W. Lewis, Jr.,[3] at Illinois Avenue and Rudolph Street, N.W.—approximately one block from 311 Rock Creek Church Road, N.W. At approximately 11:10 a.m., Special Agents Gerald Masiello and F. J. Watkins saw mail carrier Lewis deliver the two letters to 311 Rock Creek Church Road by placing the letters through a front door slot at that address. At approximately 11:05 a.m., Postal Inspector H. L. Stuart, as witnessed by Special Agent Grimes, transferred Exhibits 12A/Twelve Substitute and 13A/Thirteen Substitute to mail carrier S. L. Dennis[4] at 1101 Addison Road, N.E., Washington, D.C. At approximately 11:23 a.m., Special Agents Grimes, John King, and John Sauer saw Mr. Lewis deliver the two letters to 5109 Mann Street, by placing the mail in a mail box adjacent to and inside of the front gate to that address.

Approximately two hours later all six delivered envelopes and their contents were to be recovered by Drug Enforcement Administration Agents in the immediate vicinity of 13 S Street, N.E., from the immediate possession of defendant Kelly, after defendant Ramsey had moments before—at the outset of the arrests—sought to relinquish his own possession of the bag of marked envelopes and other evidence which Kelly had delivered to him.

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[3] Mr. Lewis had delivered 3-4 envelopes similar to those to be delivered on this date to 311 Rock Creek Church Rd. during the preceding two weeks. The envelopes were more square in shape than usual and fatter. They bore foreign postage. They were light blue or gray.

[4] Mr. Dennis had at this time been delivering mail to 5109 Mann St., N.E. for about one year. He had delivered white or light blue square-shaped envelopes with Thai postage to the address—once in January and once in February, 1974. "Shirley Hill" was the addressee on both envelopes. The envelopes themselves were bulky and appeared to contain a powdery substance that was itself between cardboard-type material. Neither prior letter to "Shirley Hill" had been returned to him as unclaimed.

On February 14, 1974,—simultaneously with the delivery by the United States mail service of the above-noted exhibits—surveillance was established by Special Agents and U.S. Postal Inspectors at the following Washington area addresses: Special Agents Puglia, Mangan, Garrett, Perry and Atlee—1803 Belle Haven Drive, Landover, Maryland; Special Agents Carroll, Salvatore, Sauer, King and Grimes, along with Postal Inspector H. L. Stuart,—5109 Mann Street, Deanewood, Maryland; Special Agents Sherbine, O'Neil, Marshal Story, Sheehan and Staples, Postal Inspector R. D. Hall—1125 D Street, N.E., Washington, D.C.; Special Agents Masiello, Watkins, Lindenauer, Knorr, Postal Inspector E. D. Strasburg—311 Rock Creek Church Road.

At approximately 12:30 p.m., Agent Sheehan, who had established a fixed observation post at 1125 D Street, N.E., from within a Government surveillance truck, observed a green Dodge Swinger parked directly behind his position. Special Agent Sheehan then observed Kelly, Ellis and Hill as they left the car and walked to the front entrance of 1125 D Street, N.E. Kelly then unlocked the door and all three persons entered. At this time, Kelly was carrying a brown paper bag. At approximately 12:45 p.m., Special Agent Sheehan observed Kelly, Ellis and Hill as they left 1125 D Street; re-enter the Dodge Swinger belonging to Mrs. Hill and left the vicinity by proceeding east on D Street and then north on 12th St. Agent Sheehan noted that Kelly departed 1125 D Street, carrying what appeared to be the same brown bag that he initially took into this address. Special Agents Staples, Grimes, Atlee and other Special Agents, as well as U.S. Postal Inspectors, all observed the green Dodge Swinger with the three suspects as they departed the area of 1125 D Street, N.E. The agents followed them to the vicinity of Second Street, N.W., approximately one-half block north of Rhode Island Avenue, N.W. Agents Grimes and Atlee observed the green car parked on the east side of Second Street, N.W., approximately midway between Rhode Island Avenue and T Street, N.W. At approximately 12:55 p.m., Agent Grimes

observed Kelly exit the car and walk across Second Street and enter a building. At approximately 1:00 p.m., Agents Grimes, Sheehan, O'Neil and Atlee saw Kelly re-enter the Dodge Swinger and proceed north on Second Street, N.W. Agents Grimes, Sheehan, O'Neil, other agents as well as U.S. Postal Inspectors, followed the car to the vicinity of 311 Rock Creek Church Road.

At approximately 1:07 p.m., Special Agents Watkins and Masiello, who had established surveillance in the vicinity of 311 Rock Creek Church Road, N.W., earlier this date, observed the green Dodge Swinger as it parked in front of Charles Adams' house at 311 Rock Creek Church Road, N.W. Shortly thereafter, Agents Watkins and Masiello saw Kelly exit the car, walk to the front door of 311 Rock Creek Church Road, and return a short time later carrying what appeared to be envelopes. Kelly, in fact entered the house and asked the sixteen-year old daughter of Charles Adams—Gwynn Adams—whether there was any mail for him. Miss Adams thereupon gave defendant Kelly the two "Mary Richardson" letters addressed to 311 Rock Creek Church Road, N.W. It should be noted that defendant Kelly's own sister corroborates generally the material events of this date, including the mail pickup by Kelly at 311 Rock Creek Church Road.

At approximately 1:08 p.m., Agents Watkins and Masiello saw Kelly rejoin the other two suspects in the Dodge Swinger and then proceed south on Rock Creek Church Road. Agents Grimes, Sheehan, O'Neil, Atlee and other Special Agents, as well as U.S. Postal Inspectors, followed the three suspects to the unit block of S Street, N.E., between North Capitol Street and Lincoln Road. Kelly arrived there at approximately 1:15 p.m. At that time, Special Agent Atlee observed Kelly park the Dodge Swinger on the north side of S Street, N.E., slightly below the intersection of Lincoln Road. The car was facing west towards North Capitol Street. Shortly thereafter, Agent Clinton Perry saw Kelly exit the car carrying a brown paper bag. Kelly walked away from the car and to 13 S Street, N.E., where he walked up a flight of stairs. At approximately the same time, Agent Staples,

who was located in the unit block of S Street, N.W., and who was using binoculars, saw a black male, later identified as Ramsey, in a silver gray lincoln, D.C. Registration No. 921-415, drive slowly past the Dodge Swinger in a westward direction. Agent Staples observed Ramsey as he began to circle the block slowly. When Ramsey returned he parked in the middle of S Street, facing west, approximately one car length in front of the Dodge Swinger. As Ramsey was parking on S Street, N.E., Agent Perry, who was walking north on Lincoln Road, saw Kelly with the brown paper bag in his left hand as he walked down the front steps of 13 S Street, N.E., and directly to the open window on the driver's side of Ramsey's car. Agent Perry who was located behind Kelly, then saw him place his right hand and arm on top of Ramsey's car and lean forward. Kelly put the brown paper bag that he was carrying in his left hand into the driver's side of Ramsey's car. Agent Staples then observed Kelly as he withdrew his left hand but not the paper bag. At this time, Agent Staples advised other agents by radio that Ramsey had now received the brown paper bag from Kelly. In response to Agent Staples' observation, Special Agent Puglia advised all the agents via radio to arrest the suspects. *Immediately*, agents blocked both ends of the unit block of S Street, N.E. Cars filled with agents pulled up to the rear and front of Ramsey and Kelly. There occurred at this time a great deal of tire screeching. Kelly was then observed by Agent Perry, who was standing approximately thirty feet from him, to look rapidly east and west on S Street, N.E. At approximately the same time, Agents King and Sauer, who had blocked Ramsey's departure, observed a brown paper bag as it came from within Ramsey's automobile and into the midriff and hands of Kelly. Agents Perry, King, and Sauer then observed Kelly with the brown paper bag as he walked away from Ramsey's automobile towards his sister's Dodge Swinger. Agent Perry identified himself and placed Kelly under arrest, as Kelly reached the front fender of the car. Agent Perry ordered Kelly to place

the brown paper bag on the hood of the Dodge Swinger. Kelly did so. Thereafter, Agent Staples joined Agent Perry and took possession of the brown paper bag (Government Exhibit No.) which contained all six delivered envelopes (Exhibits 6A/Six Substitute, 7A/Seven Substitute, 10A/Ten Substitute, 11A/Eleven Substitute, 12A/Twelve Substitute, 13A/Thirteen Substitute); $1,-100 in cash (Government Exhibit No.) contained in a white envelope (Government Exhibit No.); cutting material (Drug Exhibit No. , Lab No.) contained in a white envelope (Government Exhibit No.) bearing the inscription, "Charlie, he will have five blocks Sunday, so he says." At the same time, Agents Sauer and Mangan arrested Ramsey as he was seated in the Lincoln. Agents Staples and Atlee arrested Ellis and Hill, who had remained seated in the Dodge Swinger.

Agents later found large amounts of florescent powder on both sides of Kelly's hands and on the front part of his sweater. Similarly, large amounts of florescent powder were found on both sides of Miss Ellis' hands. A few specks of the florescent powder were found on Ramsey's hands.

E. Seizures Incidental to February 14, 1974:

When defendant Ramsey was arrested on February 14, 1974, in front of his 13 S Street, N.E., residence, Agent Richard Mangan seized from his person:

1. A letter addressed to Charles Ramsey at "13 S Street, N.E., Washington, D.C." (Government Exhibit No.).
2. A registered mail receipt # 340763 for $10,-000 from "Charles Jones" (a name often found as the payor in cashier's checks to Gilda Buck during the relevant November—February period) with the listed address 13 S Street, N.E., Washington, D.C. 20002 and apparently received to insure material sent to "Mrs. Gilda Buck, 4818 Burnet Rd., Austin, Texas." (Government Exhibit. No.).
3. A notepad containing the telephone number of "Bally" (sic) in "Aschassemberg, (sic) Germany,"

06021-731-33 (the target of the German wire intercept; and the unmonitored number of Bailey's mother, "Murril" (06021) 29156 (see Section III, *supra*, page); and also containing the inscription "Hotel Hyatt Rama, Bangkok, Thailand." (Government Exhibit No.). Charles Ramsey has been positively identified as the writer of the written portions cited, *supra*, by W. A. Schulenberger, handwriting expert from the United States Treasury Department.

4. Laminated identification cards for savings accounts at both the Riggs National Bank of Washington, D.C. (# 00-883-608) and the American Security and Trust Company (# 17-96438221), both in the name of Charles W. Ramsey. (Government Exhibit No.).

5. A personal telephone directory. (Government Exhibit No.).

6. A small red personal address book with the notation "Sister Bailey, 512-398-5495 hm, 452-1001 wk" inside of the front cover; and the inscription "S. Bailey # 6021-73133 # 6021-29156" which appears on the inside rear cover. Defendant Ramsey has been positively identified as the writer of both these notations by W. A. Schulenberger.

Of course, all six delivered letters[5]—2 each to: Continental Printing, 1125 D Street, N.E.; Miss Mary Richardson, 311 Rock Creek Church Rd., N.W.; and Miss Shirley Hill, 5109 Mann St., Deanewood, Maryland—were seized from the immediate actual possession of defendant Kelly by Agents Perry and Staples. Mannitol was also found in Kelly's brown bag (Drug Exhibit No. 19, Lab No. 28911).

Drug Enforcement Administration Special Agents thereafter obtained U.S. Magistrate's search warrants for the following addresses:

[5] On May 7, 1974, F.B.I. Agent James Tucker in the presence of Agent Atlee photographed these six delivered letters seized from Kelly (as well as the three undelivered letters to Continental Printing (Government Exhibits).

1. 1125 D Street, N.E., Washington, D.C.
2. 13 S Street, N.E., Washington, D.C.
3. 311 Rock Creek Church Rd., N.W. Washington, D.C.
4. 5109 Mann St., Deanewood, Maryland.
5. 1803 Belle Haven Dr., Apt. 302, Landover, Maryland.

The results of the 1125 D St., N.E., raid on February 14, 1974, were prodigious. Among those things seized were: one Trimaway diet scale and orange plastic bowl contained in the Trimaway box; one Pelouze scale (white) Model YG-400; used Aluminum foil box (30 sq. ft.); one "baggies" box (used 80 bag); one "baggies" box (used 150 bag); "Handi-Wrap Ziploc" box (used); measuring cup; Kitchen Craft food storage bags (used box); two strainers; used Reynolds Wrap aluminum foil box (100 Sq. ft.); forty-seven cut pieces of aluminum foil; three plastic baggies and one hard plastic container. (Government Exhibit No.). Agents also discovered 458.3 grams of Mannitol—a "cutting" or diluting chemical powder (Government Drug Exhibit No. 20, Lab. No.

Extremely revealing were the seven torn pieces of paper seized from the bottom of a trash can inside 1125 D Street, N.E., by Agent Thomas Sheehan. When fit together, the pieces formed a note which stated:

> James, as I mentioned the Equipment is in route so I would appreciate you checking Shirley, Perry and Charlie out this morning and every morning hereafter. R.
>
> (Government Exhibit No.)

Defendant Ramsey has been positively identified by handwriting expert W. A. Schulenberger as the writer of the note. (Shirley Hill, 5109 Mann St., Deanewood, Md.; 2216 Perry St., N.E.; Charlie Adams, 311 Rock Creek Church Rd., N.W.).

The February 15, 1974, execution of a U. S. Magistrate's warrant for 13 S Street, N.E., resulted in the seizure by Drug Enforcement Administration Agents of Ramsey's inscriptions on a cardboard sheet and his cal-

endar notepad (Government Exhibit No.) from his kitchen counter. On the cardboard the phone numbers of Sylvia Bailey and her mother are again listed as is Bailey's address. Gilda Buck's home and business phones are both listed. In the calendar notebook on the dates January 24, 25, and 26, 1974, there are three notations:

1. We are to confirm contracts and place cash deposit for desired package.
2. We are to confirm date and place cash deposit to assure date. Melvin Johnson to S. B.
3. End of World Serious.

W. A. Schulenberger has positively identified Charles Ramsey as the writer of all three statements. Ramsey is identified "in all probability" as the writer of "Silver 06021 73133" on the 1973 September calendar.

The February 14, 1974, execution of a United States Magistrate's search warrant for Charles Adams' residence at 311 Rock Creek Church Road, N.W., by Drug Enforcement Administration Agents resulted in seizure of defendant Ramsey's motion for a new trial. (Government Exhibit No.) and a copy of Kelly's and Adams' lease for the R & R Barber Shop at 908 9th Street, N.W. (Government Exhibit No.). The execution of another United States Magistrate's search warrant on Napoleon Hill's residence at 5109 Mann St., Deanewood, Maryland, resulted in the seizure of a letter to James W. Kelly, 5109 Mann Street, N.E., Washington, D.C. 20027. When Napoleon Hill, owner of the home, confronted Kelly after the raid on his home, Kelly said, "They were looking for me, man. That's what they were doing. Looking for me." Mr. Hill asked, "Looking for what?" Kelly replied, "The dope." When Mrs. Martha Hill, whose car Kelly used, confronted her brother, Kelly told her "It was just one of those things." She told him, "If you'd told me what you were doing, I'd never been with you." He said "I had no reason to tell you." He also told her, "You don't know nothing and you don't know nothing and I'm not telling you nothing." Kelly apologized; said that he didn't want it (the arrest of his epileptic sister) to happen; and that he never would have done it if he knew something would have happened to" her.

F. This subsection relates certain additional evidence regarding the events of February 15, 1974, concerning the search of 13 S Street, Northeast, Apartment Two, Washington, D.C., relating particularly to the offenses alleged in Criminal Case Number 74-624.

1. On February 15, 1974, during the execution of a United States Magistrate Search Warrant numbered 74-252M(CR) for the premises of 13 S Street, Northeast, Apartment Two, Washington, D.C., Special Agent Michael E. Grimes of the Drug Enforcement Administration had in his possession that Search Warrant numbered 74-252M(CR). He and other agents of the Drug Enforcement Administration and officers of the Metropolitan Police Department executed the search warrant for Apartment Two of 13 S Street, Northeast, at about 6:40 p.m.

2. The agents knocked at the door of the apartment and announced their purpose and authority in a loud voice. The agents heard a voice from within the apartment and after waiting two to three minutes the outer door was forced open. The agents again announced their purpose and authority at an inner door. This door was opened by the defendant, Charles W. Ramsey.

3. Charles W. Ramsey was handed a copy of the search warrant and the agents and police commenced a search of the apartment. Ramsey was found to be the only person present in the premises. During the course of the search of the kitchen area of the premises by Agent Grimes, defendant Ramsey's repeated request to enter the kitchen was acquiesced in by Drug Enforcement Administration agents. As a tactical matter, Agent Grimes stood to the side for the purpose of observing, and did observe Ramsey's actions upon entering the kitchen; he observed Ramsey looking around the kitchen area, but particularly noted Ramsey briefly looking upwards at a portion of the ceiling.

Other Drug Enforcement Administration agents and Ramsey thereupon departed the kitchen area; Agent Grimes expanded the area of his search of the kitchen im-

mediately to the previously unsearched ceiling of the kitchen in the location towards which he had observed Ramsey look. The ceiling was so constructed that by exerting a few-pound lifting pressure merely with his hands, Agent Grimes was able to lift free an unfastened tile at that location and he inserted his head and shoulders through the ceiling opening and from that location in the kitchen ceiling, recovered, among other items, two pistols. One was a Colt Trooper Model .357 Magnum, serial number J39598 and the second a Colt Cobra .38 caliber revolver, serial number LW162599. Each gun was transported from the S Street address to the Washington District Office of the Drug Enforcement Administration by Special Agent John Atlee. Once at the District Office, Special Agent Atlee turned the two guns over to Special Agent John Landrum. Special Agent Landrum placed each weapon into a heat-sealed envelope and placed them in a locked metal cabinet.

4. On May 17, 1974, Special Agent John Landrum of the Drug Enforcement Administration and Special Agent Edgar L. Seibert of Alcohol, Tobacco and Firearms of the United States Treasury Department transported the two pistols from the Drug Enforcement Administration District Office to the Metropolitan Police Department Firearms Range. At the Range, Special Agent Seibert test-fired both pistols and found them to be in operable condition. This was done in the presence of Special Agent Landrum. The weapons were returned to the Drug Enforcement Administration District Office.

5. Walter Gleason, Manager of Customer Service, Colt Industries, Firearms Division, Hartford, Connecticut, searched the records maintained by Colt Industries in the normal course of business and those records reflect that a Colt Trooper Mark III .357 Magnum revolver, serial number J39598 on invoice number 094258, was shipped from Hartfort, Connecticut, to the Philips Equipment Company, 525 6th Street, Northwest, Washington, D.C. in September of 1970.

6. Mr. Leonard T. Philips, Manager of the Philips Police Equipment Company, 525 6th Street, Northwest,

Washington, D.C., received from the Colt Manufacturing Company, Hartford, Connecticut, on September 11, 1970, a Colt Trooper Mark III .357 Magnum revolver, serial number J39598. On June 13, 1972, the pistol was sold to William Leak of 1104 21st Street, Northeast, Apartment Nine, Washington, D.C.

7. On June 13, 1972, William Leak of 4009 4th Street, Southeast, Washington, D.C., purchased a .357 Colt Trooper Mark III revolver, serial number J39598, from Philips Police Equipment Company. The pistol was registered with the Metropolitan Police Department on June 26, 1972. On September 10, 1973, the weapon was reported stolen by Mr. Leak to the Metropolitan Police Department.

8. Inez R. Arrendell of 3003 Van Ness Street, Northwest, Apartment W-605, is the sister of the defendant, Charles W. Ramsey. Ms. Arrendell owns the apartment building located at 13 S Street, Northeast, Washington, D.C., but is not at times material to these cases a resident. She allowed her brother the defendant Ramsey, at times material to these cases including specifically February 15, 1974, to reside at the 13 S Street, Northeast, premise and on occasions of visiting the premises had observed her brother's clothing in the apartment numbered Two at 13 S Street, Northeast. Ms. Arrendell disavows any ownership and possession of and all knowledge regarding the above-described pistols seized during the execution of the February 15, 1974, United States Magistrate Search Warrant.

The agents and officers who conducted the search of 13 S Street, Northeast, Apartment Two, on February 15, 1974, observed that the apartment was well furnished and also noticed that the closets only contained expensive male clothing. There was no female clothing stored in the apartment.

In addition to the two pistols described *supra* in paragraph 3 of this subsection, two other hand guns, $1100 in cash and approximately 39 grams gross of marijuana were seized from the kitchen ceiling compartment by Agent Grimes; an additional $1855 in cash was seized from the kitchen stove vent by Agent Grimes and (apart

from in excess of $1200 in cash seized from the person of Ramsey and from personal papers, money and other objects seized elsewhere in the premises) a notebook was found by Agent Grimes in the kitchen. This notebook has been examined by W. A. Shulenberger, a documents analyst of over forty years experience whose expert qualifications are set forth in Section VI(E) of this Record; the expert opinion of Mr. Shulenberg is that the said notebook is in the handwriting of the defendant Ramsey. The pertinent contents of the notebook are set forth in some detail elsewhere in this Record in this Section.

9. Special Agent Edgar Seibert of Alcohol, Tobacco and Firearms of the United States Treasury Department checked the United States District Court for the District of Columbia records and found the records of this Court do reflect that Charles W. Ramsey entered a plea of guilty before Judge George L. Hart, Jr., to Count Two of Criminal Case Number 218-68, a felony violation of the narcotic laws of the United States, that is, a violation of Section 4704(a), Title 26, United States Code.

* * * *

On February 5, 1974, Agents Landrum and Atlee alerted the United States Postal Inspector Richard Hall of the New York Customs seizure of the eight envelopes. A complete description of the envelopes seized—including those in Bangkok, Thailand—was given to Inspector Hall. Subsequently, on February 7, 1974, Inspector Hall notified Agent Atlee of the interception and temporary detaining under controlled conditions at the Main United States Post Office in Washington, D.C. of three brown bulky envelopes addressed to "Continental Printing Company, 1125 "D" Street, N.E." bearing Thai postage; the label "airmail" stamped in red; and measuring six and three quarters inches by four and one-half inches. Inspector Hall further related that approximately thirty envelopes met a description of the above three envelopes had been delivered to Continental Printing Company, 1125 "D" Street, N.E., since December 1973. This information was the result of an interview with Willie Askew, the postal carrier for the address.

On February 7, 1974, Special Agents Landrum and Atlee obtained a United States Magistrate's Search Warrant for the three envelopes intercepted and retained by United States Postal Service at Main Post Office, N. Capitol and Massachusetts Avenue, N.W., Washington, D.C. On the same date, Special Agents Landrum and Atlee, after serving the warrant on Postmaster Simms, Main Post Office, Washington, D.C., searched the envelopes, conducted a field test on the white powder, and received a positive reaction on the Marquis reagent for an opiate drug. Drug Exhibits #3, 4, and 5, addressed to Continental Printing Company, 1125 "D" Street, N.E., were seized pursuant to the warrant. They were transported to the Washington District Office on the same date, stored in a locked cabinet, and delivered to Region 4 Laboratory on February 12, 1974 by Special Agents Landrum and Atlee. On February 13, 1974, Region 4 Laboratory advised Washington District Office that drug Exhibits #3, 4, and 5 contained heroin hydrochloride in the following respective amounts: 92.5%, 75.4% and 84.6%. The containers (drug Exhibits #3A, 4A and 5A, respectively) were transported to the Federal Bureau of Investigation Laboratory on February 26, 1974 for fingerprint analysis.

SUPREME COURT OF THE UNITED STATES

No. 76-167

UNITED STATES, PETITIONER

v.

CHARLES W. RAMSEY and JAMES W. KELLY

ORDER ALLOWING CERTIORARI

Filed October 4, 1976

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

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